(b) During the period from the time of its incorporation to January 1, 1928, the Warner Corporation, by means of successive amendments to its articles of incorporation, duly increased its authorized capital stock from the original capital of $2,300,000 to $15,000,000, consisting of 100,000 shares of common stock of the par value of $100 per share ($10,000,000) and 50,000 shares of preferred stock of the par value of $100 per share ($5,000,000).

(c) Of the authorized increase in common stock, amounting to $9,700,000, all was issued as a dividend on the common stock of the Corporation—$7,000,000 on or about December 19, 1922,
7 $700,000 on or about December 22, 1923, and $2,000,000 on or about June 12, 1925. Of the authorized increase in preferred stock, amounting to $3,000,000, there was issued as a dividend on the common stock of the Corporation—$1,000,000 on or about June 12, 1925, and $1,000,000, on or about December 31, 1926.

(d) During the year 1928, the Warner Corporation was again duly recapitalized, in accordance with the laws of the State of Delaware, by increasing its authorized capital stock from $15,000,000 to $25,000,000, consisting of 100,000 shares of common stock of the par value of $100 per share ($10,000,000) and 150,000 shares of preferred stock of the par value of $100 per share ($15,000,000).

(e) During the year 1928, the directors of said Warner Corporation duly authorized the issuance and distribution of 50,000 shares of said additional 100,000 shares of preferred stock resulting from said recapitalization as a stock dividend to the holders of record of the common stock of said Corporation in the ratio of one share of preferred stock to two shares of common stock. Thereafter, and during the year 1928, the officers of said Corporation, pursuant to the authority so given by the directors, duly issued 50,000 shares of preferred stock of said Corporation in the ratio of one share of preferred stock to two shares of common stock to the common stockholders of record at the close of business on December 1, 1928.

That your petitioner was the owner and holder of record on
8 December 1, 1928, of 25,165 shares of common stock of said Corporation and received 12,582½ shares of said preferred stock as a stock dividend and pursuant to said distribution.

(f) At the beginning of the year 1931, there remained unissued 50,000 shares of said preferred stock which said Warner Corporation had obtained authority to issue by virtue of the recapitalization which occurred during the year 1928.

(g) During the year 1931, the directors of said Warner Corporation duly authorized the issuance of 25,000 shares of said preferred stock as a stock dividend to holders of record of the common stock of said Corporation in the ratio of one share of preferred stock to four shares of common stock. Thereafter and during the

year 1931, the officers of said Corporation, pursuant to the authority so given by the directors, duly issued and distributed 25,000 shares of preferred stock of said Corporation in the ratio of one share of preferred stock to four shares of common stock to the common stockholders of record at the close of business on April 2, 1931. That your petitioner was the owner and holder of record on April 2, 1931, of 25,165 shares of the common stock of said Corporation and received 6,291¼ shares of such preferred stock as a stock dividend and pursuant to such distribution.

(h) On information and belief, the distribution by William R. Warner Corporation of said 6,291¼ shares of preferred stock of said Corporation during the year 1931, and the receipt
9 thereof by the petitioner, was not only in fact and in law a non-taxable stock dividend, but also was a distribution in pursuance of a plan of reorganization within the meaning of the provisions of Section 112 of the Revenue Act of 1928.

(i) During the year 1931 your petitioner sold to the Warner Corporation 2,000 shares of the preferred stock of said Corporation which she then owned and which she had acquired as a part of the stock dividend and distribution of 12,582½ shares during the year 1928, as aforesaid, and received therefor the sum of $200,000.

(j) Petitioner included in her return for the year 1931 the sum of $180,100 as capital gain from the sale of said 2,000 shares of preferred stock sold to the Warner Corporation during the year 1931 and paid the capital gain tax thereon in the amount of $22,512.50, no part of which tax has been refunded or allowed as a credit.

WHEREFORE, the petitioner prays that this Board may hear this proceeding and relieve the petitioner from the deficiency in tax resulting (1) from treating the fair market value of said 6,291¼ shares of preferred stock received by the petitioner in the year 1931 as a taxable dividend; (2) from treating the proceeds of the sale of said 2,000 shares of preferred stock received by the petitioner in the year 1928 as a taxable dividend for the year 1931; and (3) in the event that a deficiency in tax shall be found by reason of treating the said 6,291¼ shares of preferred stock as a taxable dividend, that the amount of such deficiency shall be reduced
10 by the elimination of the capital gain tax on the said 2,000 shares of preferred stock sold to the Warner Corporation in the year 1931.

ANNIE M. PFEIFFER,
Petitioner.

ROBERT A. YOUNG,
Counsel for Petitioner,
Office and P. O. Address,
No. 120 Broadway, New York, New York.

[*Duly sworn to by Annie M. Pfeiffer, jurat omitted in printing.*]

11 *Exhibit A to amended petition*

IT:AR:A-5
WGS-90D

DEC. 12, 1935.

MRS. ANNIE M. PFEIFFER,
370 Riverside Drive,
New York, New York.

MADAM: You are advised that the determination of your income tax liability for the year 1931, discloses a deficiency of $125,660.67, as shown in the statement attached.

In accordance with section 272 (a) of the Revenue Act of 1928, as amended by section 501 of the Revenue Act of 1934, notice is hereby given of the deficiency mentioned. Within ninety days (not counting Sunday or a legal holiday in the District of Columbia as the ninetieth day) from the date of the mailing of this letter, you may file a petition with the United States Board of Tax Appeals for a redetermination of the deficiency.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Commissioner of Internal Revenue, Washington, D. C., for the attention of IT:C:P-7. The signing and filing of this form will expedite the closing of your return by permitting an early assessment of the deficiency and will prevent the accumulation of interest, since the interest period
12 terminates thirty days after filing the form, or on the date assessment is made, whichever is earlier.

Respectfully,

GUY T. HELVERING,
Commissioner.

By (Signed) CHAS. T. RUSSELL,
Deputy Commissioner.

Enclosures:
Statement
Form 870
Schedules 1 and 2 WGS/MQ-3

STATEMENT

IT:AR:A-5
WGS-90D

In re: Mrs. Annie M. Pfeiffer, 370 Riverside Drive, New York, New York

Income Tax Liability

Year	Income tax liability	Income tax assessed	Deficiency
1931	$183,016.19	$57,355.52	$125,660.67

Adjustments producing the above-stated results are shown in the attached schedules.

Careful consideration has been accorded your protest dated May 9, 1935, against the findings contained in Bureau letter dated April 19, 1935.

A copy of this letter, together with a copy of the statement and schedules has been mailed to your representative, Mr. Robert A. Young, 120 Broadway, New York, New York, in accordance
13 with the authority conferred upon him in the power of attorney executed by you and on file with the Bureau.

WGS/MQ-3

Mrs. Annie M. Pfeiffer

Year ended December 31, 1931

SCHEDULE 1. *Adjustments to net income*

Net income as disclosed by return:		
Ordinary	$215,915.11	
Capital	180,100.00	$396,015.11
As corrected		956,780.95
Net adjustment as computed below		$560,765.84
Unallowable deductions and additional income:		
(a) Preferred stock redeemed	$200,000.00	
(b) Dividend in preferred stock	629,125.00	
Total		$829,125.00
Nontaxable income and additional deductions:		
(c) Capital gain	$180,100.00	
(d) Contributions	88,259.16	
Total		$268,359.16
Net adjustment as above		$560,765.84

14 SCHEDULE 1-A. *Explanation of items*

(a) and (c) The amount received upon the redemption of 2,000 shares of preferred stock held by you in the William R. Warner Corporation is considered a taxable dividend under the provisions of section 115 (g) of the Revenue Act of 1928, upon a review of the facts submitted with respect to the issuance of stock dividends and their subsequent redemption by the corporation, and accordingly is included herein as taxable income, in lieu of the capital gain reported upon the sale of such stock.

(b) It is held that the issuance during the year 1931, by the William R. Warner Corporation of preferred stock as a dividend upon the common stock, did not constitute a tax-free stock dividend and, accordingly, the value thereof is taxable to the recipient. The declaration of this dividend effected an alteration of preexisting interests of the stockholders.

(d) Adjustment of allowance for donations under the statutory limitation is computed as follows:

Net income reported (as above)	$396,015.11
Add:	
Contributions deducted	69,885.02
Additions, items (a) and (b)	829,125.00
	$1,295,025.13
Deduct:	
Item (c) above	180,100.00
15 Net income before deduction of contributions	$1,114,925.13
15% limitation	167,238.77
Actual contributions (allowed)	158,144.18
Deducted on return	69,885.02
Additional allowance	88,259.16

WGS/MQ-3

Mrs. Annie M. Pfeiffer

Year ended December 31, 1931

SCHEDULE 2. *Computation of tax*

Net income (subject to surtax)		$956,780.95
Less:		
Dividends	$1,126,290.60	
Interest on Liberty bonds	2,762.50	
		1,129,053.10
Balance subject to normal tax		None
Surtax on $956,780.95		183,016.19
Total		183,016.19
Tax previously assessed Acct. No. 301382		57,355.52
Additional tax to be assessed		125,660.67

WGS/MQ-3

16 Before United States Board of Tax Appeals

[Title omitted.]

Answer to original and amended petitions

Filed February 10, 1936

Now comes the Commissioner of Internal Revenue, by his attorney, Herman Oliphant, General Counsel for the Department of the Treasury, and for answer to the original and amended petitions in the above-entitled proceeding, admits and denies as follows:

1. Admits the allegations of paragraph 1 of the original and amended petitions.

2. Admits the allegations of paragraph 2 of the original and amended petitions.

3. Admits the allegations of paragraph 3 of the original and amended petitions.

4. (a). (1–3), (b), and (c). Denies the allegations of paragraphs 4 (a) (1) to (3), (b) and (c), inclusive, of the original and amended petitions, and further, denies that in the determination of the tax liability for the year 1931, the respondent erred in the manner alleged.

17 Page 4 (a) to (j). Denies any knowledge or information sufficient to form a belief as to the truth of the allegations of paragraphs (a) to (j), inclusive, appearing on pages 4, 5, 6, and 7 of the original and amended petitions and therefore, denies the same.

6. Denies generally and specifically each and every allegation of the original and amended petitions not hereinabove admitted or denied.

Wherefore, it is prayed that the petition be denied.

Herman Oliphant,
(Signed) HERMAN OLIPHANT,
General Counsel for the Department of the Treasury.

Of Counsel:
HARTFORD ALLEN,
WALTER W. KERR,
Special Attorneys,
Bureau of Internal Revenue.

A/mms—2/7/36.

18 Before United States Board of Tax Appeals

[Title omitted.]

Agreed statement of facts

Filed April 20, 1936

It is hereby stipulated and agreed by and between the counsel for each party that the following facts may be taken as true for the purposes of the trial of this proceeding, subject to the right of either party to introduce additional evidence upon such trial and subject to the right of either party to object to the relevancy or materiality of any item of evidence herein contained:

1. Petitioner is an individual residing at No. 370 Riverside Drive, New York, New York.

2. Petitioner filed an individual Federal income tax return for the year 1931 in the office of the Collector of Internal Revenue, New York, New York (3d District), and reported therein a net taxable income in the amount of $396,015.11, of which $215,915.11 was reported as ordinary income, and of which the balance of $180,100 was reported as capital gain. Such return disclosed a total tax liability of $57,355.52, which was paid.

19 3. Under date of December 12, 1935, the Respondent issued a 90-day letter in accordance with the provisions of Section 272 (a) of the Revenue Act of 1928, as amended by Section 501 of the Revenue Act of 1934, proposing the assessment of a deficiency against the Petitioner for the year 1931 in the amount of $125,660.67. The proposed additional tax of $125,660.67 is due to the following adjustments in the Petitioner's net income:

(1) The inclusion of $629,125.00, the par value of the preferred stock of William R. Warner Corporation, received by the Petitioner during the year 1931 as a pro rata distribution to common stockholders, as a taxable dividend.

(2) The inclusion of $200,000.00 representing the proceeds from the redemption by the William R. Warner Corporation during the year 1931 of 2,000 shares of preferred stock of that Corporation received by the Petitioner during the year 1928 (Certificates Nos. 3455 and 3456 for 1,000 shares each) as a part of her pro rata distribution of preferred stock to common stockholders, as a taxable dividend under the provisions of Section 115 (g) of the Revenue Act of 1928.

A copy of the 90-day letter is attached hereto, designated as Schedule No. 1, and made a part of this Agreed Statement of Facts.

4. William R. Warner Corporation is a corporation duly organized on November 8, 1920, under the laws of the State of Dela-
20 ware under the name of "William R. Warner & Co., Inc." for the primary purpose of taking over the business of a Pennsylvania corporation of the same name, organized in 1908, and acquiring and holding the stocks of various subsidiary or affiliated companies. The details of the acquisition of the assets and properties, including the capital stock of other companies, of the Pennsylvania corporation are not deemed material to the determination of the questions involved in the instant controversy. The principal office of the Delaware Corporation is at No. 113 West 18th Street, New York, New York. The name of the Delaware Corporation was changed from William R. Warner & Co., Inc., to William R. Warner Corporation, on August 5, 1930, and on August 7, 1934, was again changed to William R. Warner & Co., Inc.

5. The original authorized capital stock of the Delaware Corporation was $2,300,000, consisting of 20,000 shares of preferred stock of the par value of $100 per share, amounting in the aggregate to $2,000,000 and 3,000 shares of common stock of the par value of $100 per share, amounting in the aggregate to $300,000. Article FOURTH of the original Certificate of Incorporation, relating to the preferences and priorities of the preferred and common stocks, is attached hereto, designated as Schedule No. 2.

6. Under the terms of the agreement between the Delaware Corporation and the Pennsylvania corporation whereby the Delaware Corporation acquired all of the assets and properties of the Pennsylvania corporation, the Delaware Corporation agreed to issue
21 to the Pennsylvania corporation, or its nominees, all of its authorized common stock (3,000 shares) and 2,000 shares of its preferred stock. The Pennsylvania corporation directed the Dela-

ware Corporation to issue the common and preferred stock to its shareholders in the same proportion as their stock holdings in the Pennsylvania corporation. This stock was so issued as follows:

Name	Common Stock	Preferred Stock
Annie M. Pfeiffer	600	-----
Gustavus Pfeiffer	1,185	-----
Henry Pfeiffer	855	-----
Garfield D. Merner	300	-----
Other persons	60	-----
William R. Warner, Jr.	-----	2,000
	3,000	2,000

Shortly after the Delaware corporation was organized, it issued the following preferred shares to the persons indicated in settlement of an indebtedness of the Pennsylvania corporation to those persons which had been assumed by the Delaware corporation:

Name	Number of Shares
Annie M. Pfeiffer	1,368
Gustavus Pfeiffer	2,702
Henry Pfeiffer	1,950
Other persons	823
	6,843

7. During the period from November 8, 1920, to December
22 31, 1921, Petitioner became the owner of 155 additional shares of the common stock of the Delaware corporation. The Petitioner acquired 125 of said additional shares as a gift from her husband, Henry Pfeiffer, and purchased the remaining shares for cash.

Hereinafter, it will be understood that the Delaware Corporation will be referred to as the "Corporation."

8. On or about December 20, 1922, the Certificate of Incorporation of the Corporation was amended so as to increase the authorized capital stock from $2,300,000, consisting of preferred stock of the par value of $2,000,000, and common stock of the par value of $300,000, to the sum of $10,000,000, consisting of 20,000 shares of preferred stock of the par value of $100 per share, amounting in the aggregate to $2,000,000, and 80,000 shares of common stock of the par value of $100 per share, amounting in the aggregate to $8,000,000, an increase of $7,700,000 in the common stock. The terms, provisions, preferences and priorities of the two classes of stock remained unchanged.

9. On December 22, 1922, pursuant to authority of the Board of Directors, the Corporation issued and distributed 70,000 shares of common stock amounting in the aggregate in par value to $7,000,000, pro rata to common stockholders of the Corporation.

A copy of the minutes of the meeting of the Board of Directors of the Corporation held on December 22, 1922, at which the Board authorized the said distribution is annexed hereto, designated as Schedule No. 3.

23 At that time, the outstanding capital stock of the Corporation was held as follows:

Name of Shareholder	Common Stock	Preferred Stock
Annie M. Pfeiffer	755	2,370
Gustavus Pfeiffer	1,485	------
Henry Pfeiffer	730	50
C. Leonard Pfeiffer	30	30
Employees of Corporation		2,191
Other Shareholders		11,013
	3,000	15,654

Petitioner was the owner of 755 shares of the common stock of the Corporation and received as her pro rata share of such distribution 17,616 shares of common stock, thereby increasing the number of common shares then owned by her to 18,371. (Fractional shares are disregarded.)

10. On December 20, 1923, pursuant to authority of the Board of Directors, the Corporation issued and distributed the remaining 7,000 shares of common stock amounting in the aggregate in par value to $700,000, pro rata to common stockholders.

A copy of the minutes of the meeting of the Board of Directors of the Corporation held on December 5, 1923, at which the Board authorized the said distribution, is annexed hereto, designated as Schedule No. 4.

At that time, the outstanding capital stock of the Corporation was held as follows:

24 Name of Shareholder	Common Stock	Preferred Stock
Annie M. Pfeiffer	18,371	1,475
Gustavus Pfeiffer	36,135	------
Henry Pfeiffer	17,764	8
C. Leonard Pfeiffer	730	130
Employees of Corporation		2,663
Other Shareholders		11,733
	73,000	16,009

Petitioner was the owner of 18,371 shares of the common stock and received as her pro rata share of such distribution 1,761 shares of common stock, thereby increasing the number of common shares then owned by her to 20,132.

11. On April 22, 1925, pursuant to an authorization adopted at a special meeting of the preferred and common stockholders of the Corporation, the Certificate of Incorporation was again amended so as to increase the authorized capital stock from $10,000,000, consisting of $2,000,000 of preferred stock and $8,000,000 of common stock, to $15,000,000, consisting of 50,000 shares of preferred stock of the par value of $100 per share, amounting in the aggregate to $5,000,000 and 100,000 shares of common stock of the par value of $100 per share, amounting in the aggregate to $10,000,000; an increase of $3,000,000 in the preferred stock and of $2,000,000 in the common stock.

All the common stock, including the common stock of the Petitioner, was voted in person or by proxy in favor of said increase in authorized capital stock.

25 The terms, provisions, preferences, and priorities of the two classes of stock remained unchanged.

A certificate reflecting this increase in capital was duly filed in the office of the Secretary of State of Delaware on April 22, 1925.

12. On July 22, 1925, pursuant to authority of the Board of Directors, as set forth in Schedule No. 5, the Corporation issued and distributed 20,000 shares of common stock, amounting in the aggregate in par value to $2,000,000, pro rata to common stockholders, and at the same time distributed 10,000 shares of preferred stock, amounting in the aggregate in par value to $1,000,000, pro rata to common stockholders of the Corporation.

A copy of the minutes of the meeting of the Board of Directors of the Corporation held on June 12, 1925, at which the Board authorized the said distribution, is annexed hereto, designated as Schedule No. 5.

At that time, the outstanding capital stock of the Corporation was held as follows:

	Common Stock	Preferred Stock
Annie M. Pfeiffer	20,132	1,410
Gustavus Pfeiffer	39,600	------
Henry Pfeiffer	19,468	------
C. Leonard Pfeiffer	800	30
Employees of Corporation	------	2,858
Other Shareholders	------	11,201
	80,000	15,499

26 Petitioner was the owner of 20,132 shares of common stock and received as her pro rata share of such distribution 5,033 shares of common stock and 2,516 shares of preferred stock.

13. On December 31, 1926, pursuant to the authorization of the Board of Directors, the Corporation issued and distributed 10,000 shares of the preferred stock of the Corporation, amounting in the aggregate in par value to $1,000,000, pro rata, to common stockholders of the Corporation in the ratio of one (1) share of preferred stock to each ten (10) shares of common stock.

A copy of the minutes of the meeting of the Board of Directors of the Corporation held on November 30, 1926, at which the Board authorized the said distribution, is annexed hereto, designated as Schedule No. 6.

At that time, the outstanding capital stock of the Corporation was held as follows:

Name of Shareholder	Common Stock	Preferred Stock
Annie M. Pfeiffer	25,165	3,676
Gustavus Pfeiffer	49,500	1,995
Henry Pfeiffer	24,335	1,847
C. Leonard Pfeiffer	1,000	170
Employees of Corporation	------	3,259
Other Shareholders	------	12,655
	100,000	23,602

Petitioner was the owner of 25,165 shares of common stock of the Corporation and received as her pro rata share of such distribution 2,516 shares of preferred stock.

27 14. On November 28, 1928, pursuant to an authorization adopted at a special meeting of the preferred and common stockholders of the Corporation, the Certificate of Incorporation was again amended so as to increase the authorized capital stock from $15,000,000, consisting of $5,000,000 of preferred stock and $10,000,000 of common stock, to $25,000,000, consisting of 150,000 shares of preferred stock of the par value of $100 per share, amounting in the aggregate to $15,000,000, and 100,000 shares of common stock of the par value of $100 per share, amounting in the aggregate to $10,000,000, an increase of $10,000,000 in the preferred stock.

99,000 out of 100,000 shares of the common stock of the Corporation, including all of the stock of the Petitioner, was voted in person or by proxy in favor of the said increase in authorized capital stock.

A copy of the minutes of the meeting of the shareholders of the Corporation held on November 27, 1928, at which the shareholders authorized the said increase in the authorized capital stock, is annexed hereto, designated as Schedule No. 7.

The terms, provisions, preferences, and priorities of the two classes of stock remained unchanged.

A certificate reflecting this increase in capital was duly filed in the office of the Secretary of State of Delaware on November 28, 1928.

15. On December 31, 1928, pursuant to authority of the Board of Directors, the Corporation issued and distributed 50,000 shares

28 of the preferred stock of the Corporation, amounting in the aggregate in par value to $5,000,000, pro rata to common stockholders of the Corporation in the ratio of one (1) share of preferred stock to each two (2) shares of common stock held by the common stockholders.

A copy of the minutes of the meeting of the Board of Directors of the Corporation held on December 18, 1928, at which the Board authorized the said distribution, is annexed hereto, designated as Schedule No. 8.

At that time, the outstanding capital stock of the Corporation was held as follows:

Name of shareholder	*Common Stock*	*Preferred Stock*
Annie M. Pfeiffer	25,165	12,122
Gustavus Pfeiffer	49,500	5,895
Henry Pfeiffer	24,335	79
C. Leonard Pfeiffer	1,000	270
Employees of Corporation	-------	4,355
Other Shareholders	-------	21,583
	100,000	34,304

Petitioner was the owner of 25,165 shares of common stock and received as her pro rata share of such distribution 12,582 shares of preferred stock of the Corporation.

16. On April 27, 1931, pursuant to authority of the Board of Directors of the Corporation, the Corporation issued and distributed

25,000 shares of the preferred stock of the Corporation, of the value of $100 per share, amounting in the aggregate to $2,500,000, pro rata to common stockholders of the Corporation in the ratio of one (1) share of preferred stock to each four (4) shares of common stock.

A copy of the minutes of the meeting of the Board of Directors of the Corporation held on April 24, 1931, at which the Board authorized the said distribution, is annexed hereto, designated as Schedule No. 9.

At that time, the outstanding capital stock of the Corporation was held as follows:

Name of Shareholder	Common Stock	Preferred Stock
Annie M. Pfeiffer	25,165	9,642
Gustavus A. Pfeiffer	49,500	24,034
Henry Pfeiffer	24,335	6,901
C. Leonard Pfeiffer	1,000	150
Employees of Corporation	-------	5,836
Other Shareholders	-------	32,977
	100,000	79,540

Petitioner was the owner of 25,165 shares of common stock and received as her pro rata share of such distribution 6,291¼ shares of preferred stock of the Corporation.

17. The following tabulation shows (1) the original capitalization of the Corporation, (2) each change in the authorized capital stock, and (3) each distribution of common and preferred stock made to the common stockholders from the date of organization to and including April 27, 1931. Each distribution of preferred and common stock set forth below was made pro rata to the holders of the common stock.

Date	Common stock		Preferred stock	
	Authorized	Issued	Authorized	Issued
Nov. 8, 1920, original issue	$300,000	$300,000	$2,000,000	$2,000,000
Dec. 20, 1922, increase	7,700,000	-------	-------	-------
Dec. 22, 1922, distributed	-------	7,000,000	-------	-------
Dec. 20, 1923, distributed	-------	700,000	-------	-------
Apr. 22, 1925, increase	2,000,000	-------	3,000,000	-------
July 22, 1925, distributed	-------	2,000,000	-------	1,000,000
Dec. 31, 1926, distributed	-------	-------	-------	1,000,000
Nov. 28, 1928, increase	-------	-------	10,000,000	-------
Dec. 31, 1928, distributed	-------	-------	-------	5,000,000
Apr. 27, 1931, distributed	-------	-------	-------	2,500,000
Total	$10,000,000	$10,000,000	$15,000,000	$11,500,000

NOTE (1). The above table does not show the outstanding preferred stock.
NOTE (2).—The above table does not include the transaction involving the redemption of the preferred stock in 1931.

All of the distributions of preferred and common stock, including the distribution of April 27, 1931, consisted of new stock not previously issued, and represented a capitalization of earnings and profits accumulated since the Corporation was formed in November 1920.

18. After the distribution of the stock dividends in 1928 and 1931, the Corporation continued to engage in business under the same directors, officers and management, the same as it had been doing prior to those respective dates.

19. There is attached hereto and made a part of this Agreed Statement of Facts a schedule, designated as Schedule No. 10, showing the Consolidated Balance Sheets of the Corporation and its Subsidiaries as of (1) January 1, 1921 (2) January 1, 1929, (3) January 1, 1931, and (4) December 31, 1931, and an analysis of
31 the consolidated surplus for the year ended December 31, 1931.

20. There is attached hereto and made a part of this Agreed Statement of Facts a schedule, designated as Schedule No. 11, showing the Balance Sheets of William R. Warner Corporation as of the following dates: (1) January 1, 1921, (2) January 1, 1929, (3) January 1, 1931, and (4) December 31, 1931; and an analysis of surplus for the year ended December 31, 1931.

21. The Consolidated Net Earnings of the Corporation and its Subsidiaries, after the deduction for taxes, for the years 1920 to 1931, inclusive, are shown in the annexed schedule, designated as Schedule No. 12.

The term "Subsidiaries", as used in this Agreed Statement of Facts, means corporations all of whose capital stock, except a very small amount of preferred stock of two or three subsidiary corporations, was owned by the Corporation.

22. The net earnings of the Corporation, including dividends of its Subsidiaries, for the years 1920 to 1931, inclusive, after the deduction for taxes, are also shown on the annexed Schedule No. 12.

23. Schedule No. 12 also contains a statement of the cash dividends distributed by the Corporation on its common and preferred stocks during each of the years 1920 to 1931, inclusive. There has been no default in the payment of dividends in full on the outstanding
32 preferred stock of the Corporation since its organization, and at the time of the distribution of the 25,000 shares of preferred stock of the Corporation referred to in paragraph 16 of this Agreed Statement of Facts, distributed on April 27, 1931, there was no accumulation of unpaid dividends on any of the preferred stock of this Corporation.

24. The shares of preferred stock of the Corporation distributed to Petitioner in the years 1928 and 1931 had, at the time of receipt by Petitioner, the fair market value of $100 per share.

Petitioner did not include as gross income in her Federal income-tax return for the year 1928 the value of the 12,582 shares of preferred stock of the Corporation received by her as a stock dividend during that year.

25. On December 29, 1931, the Corporation redeemed 8,500 shares of its preferred stock, of which 2,000 shares were owned by Petitioner and represented stock which she had acquired as a part of the said 12,582 shares of preferred stock distributed to her as a stock

dividend during the year 1928. Of the balance of the shares so redeemed, Gustavus A. Pfeiffer owned 4,500 shares and Henry Pfeiffer owned 2,000 shares. Gustavus A. Pfeiffer and Henry Pfeiffer were the remaining principal common stockholders of the Corporation.

26. Upon the transfer of the said 2,000 shares of preferred stock to the Corporation, the Petitioner received therefor the sum of $200,000 in cash.

33 27. Petitioner included in her Federal income tax return for the year 1931, and designated as capital gain, the sum of $180,100 representing gain from the redemption by the Corporation of said 2,000 shares of preferred stock, computed in accordance with the regulations of the Respondent governing the ascertainment of the basis of stock received as a stock dividend, and the sum of $200,000 received therefor. Petitioner paid an income tax of $22,512.50 thereon, such tax being computed at the capital gain tax rate.

28. If the Board should find that the redemption of said 2,000 shares of preferred stock constituted a sale and that the gain is required to be computed on the adjusted cost basis, then it is conceded that the gain thereon amounted to $180,100 and that the proper amount of tax has been paid thereon.

29. If the Petitioner's net income is reduced by the order of the Board, the statutory limitation of the deductions for charitable contributions may be adjusted accordingly.

Dated: April 15, 1936.

ROBERT A. YOUNG,
Attorney for Petitioner.
HERMAN OLIPHANT,
Attorney for Respondents.

(For Schedule No. 1 referred to herein see Exhibit A attached to Amended Petition.)

34 *Schedule No. 2*

William R. Warner & Co., Inc.

Certificate of Incorporation

Article Fourth

The total authorized capital stock of the Corporation is twenty thousand (20,000) shares of Preferred Stock of the par value of One Hundred Dollars ($100) per share amounting in the aggregate to Two Million Dollars ($2,000,000), and three thousand (3,000) shares of Common Stock of the par value of One Hundred Dollars ($100) per share amounting in the aggregate to Three Hundred Thousand Dollars ($300,000).

The said twenty thousand (20,000) shares of Preferred Stock shall be entitled to receive, when and as declared, from the surplus

or net profits of the Company, yearly dividends at the rate of six percentum (6%) per annum and no more, payable quarterly on the first week-day of October, January, April, and July beginning in January 1921. The dividends on the Preferred Stock shall be cumulative and shall be payable before any dividend on the Common Stock shall be paid or set apart, so that if in any year dividends amounting to six percent (6%) shall not have been paid thereon, the deficiency shall be payable before any dividend shall be paid upon or set apart for the Common Stock. Whenever all cumulative dividends on the Preferred Stock for all previous years shall have been declared and shall have become payable, and the accrued quarterly installments for the current year shall have
35 been declared and the company shall have paid such cumulative dividends for previous years and such accrued quarterly installments or shall have set aside from its surplus or net profits a sum sufficient for the payment thereof, the Board of Directors may declare dividends on the Common Stock payable then or thereafter, out of any remaining surplus or net profits. In the event of any liquidation or dissolution or winding up of the corporation (whether voluntary or involuntary) the holders of the Preferred Stock shall be entitled to be paid in full, both the par amount of their shares and the unpaid dividends accrued thereon before any amount shall be paid to the holders of the Common Stock. Thereafter the remaining assets and funds shall be divided and paid to the holders of the Common Stock, according to their respective shares. The holders of the Preferred Stock shall not be entitled to vote. Such Preferred Stock shall be redeemable by the company or may be purchased by it on any quarterly dividend day in amounts of not less than one hundred (100) shares at the price of One Hundred and Five Dollars ($105) per share, together with all unpaid dividends accrued thereon.

Schedule No. 3

William R. Warner & Co., Inc.

Special Meeting of Board of Directors

A Special Meeting of the Board of Directors of William
36 R. Warner & Co., Inc., was held at the office of the Company, No. 113 West 18th Street, Borough of Manhattan, City, County, and State of New York, on the 22nd day of December 1922, at 2:30 o'clock, P. M.

There were present at said meeting: Messrs. Henry Pfeiffer, Gustavus A. Pfeiffer, Ernest B. Benson, Edward Kallenbach.

Absent: Mr. William R. Warner, Jr.

The President of the Company, Mr. Henry Pfeiffer, presided, and called the meeting to order, and Mr. E. B. Benson, the secretary of the Company, acted as Secretary of the Meeting.

The Secretary presented an agreement and written Waiver of Notice, signed by all of the Directors, which was ordered to be placed on file.

On motion duly made, seconded, and unanimously carried, the following preambles and resolutions were adopted:

"Whereas, the common stock of this Corporation has been increased pursuant to a resolution duly adopted at a special meeting of the common stockholders held on the 19th day of December 1922, from Three Thousand (3,000) shares of the par value of One Hundred Dollars ($100) per share, amounting in the aggregate to Three Hundred Thousand Dollars ($300,000) to Eighty Thousand
37 (80,000) shares of the par value of One Hundred Dollars ($100) per share, amounting in the aggregate to Eight Million Dollars, ($8,000,000) and

"Whereas, the value of the assets of this Corporation exceeds the par value of the common stock now issued by more than Seven Million Dollars ($7,000,000), now, therefore, be it

"Resolved, that the proper officers of the Corporation are hereby authorized and directed to issue additional common stock to the amount of Seven Million Dollars ($7,000,000), and be it

"Further Resolved, that the said officers of the corporation be, and they are hereby authorized and directed to distribute said Seven Million Dollars ($7,000,000) of common stock, consisting of Seventy-Thousand (70,000) shares of the par value of One Hundred Dollars ($100), each, pro rata to common stockholders of the Corporation in the ratio of Seventy (70) shares to each three (3) shares held by common stockholders of record at the close of business on the 22nd day of December A. D. 1922."

* * * * * * *

Upon motion duly made, seconded, and carried, the foregoing minutes as read were approved as and for the minutes of this meeting.

Upon motion duly made, seconded, and carried, the meeting thereupon adjourned.

(Signed) E. B. Benson, *Secretary.*

38 *Schedule No. 4*

William R. Warner & Co., Inc.

Minutes of Special Meeting of the Board of Directors

A Special Meeting of the Board of Directors was held at the office of the Company, No. 113 West 18th Street, New York City, New York, on the 5th day of December 1923, at 11:35 o'clock in the forenoon.

There were present Messrs. Henry Pfeiffer, G. A. Pfeiffer, Edward Kallenbach, and Roger S. Baldwin, constituting a majority of the members of the Board of directors.

Mr. Henry Pfeiffer, the President, presided and called the meeting to order, and Mr. E. B. Benson, Secretary of the Company, acted as Secretary of the meeting.

Waiver of notice of the meeting, subscribed by all of the directors of the Company was presented by the Secretary and ordered to be placed on file.

On motion duly made, seconded, and unanimously carried, the following preambles and resolutions were adopted:

"Whereas, the total authorized common stock of this corporation amounts to eighty thousand (80,000) shares of the par value of One Hundred Dollars ($100) each, of which there still remains unissued seven thousand (7,000) shares, and

"Whereas, the surplus and profits of this corporation ex-
39 ceeds the par value of the common stock now issued by more than Seven Hundred Thousand Dollars ($700,000), now therefore, be it

"Resolved, that the proper officers of the corporation be and they hereby are authorized and directed to issue additional common stock to the amount of Seven Hundred Thousand Dollars ($700,000), and be it

"Further Resolved, that the said officers of the corporation be and they hereby are authorized and directed to distribute said Seven Hundred Thousand Dollars ($700,000) of common stock, consisting of seven thousand (7,000) shares of the par value of One Hundred Dollars ($100) each, pro rata to common stockholders of the corporation in the ratio of seven (7) shares to each seventy-three (73) shares held by common stockholders of record at the close of business on the 20th day of December, 1923."

* * * * * * *

Upon motion duly made, seconded and carried, the foregoing minutes as read were approved as and for the minutes of this meeting.

Upon motion duly made, seconded and carried, the meeting thereupon adjourned.

(Signed) ERNEST B. BENSON, *Secretary.*

40 *Schedule No. 5*

William R. Warner & Co., Inc.

Special Meeting of Board of Directors

A special meeting of the Board of Directors of William R. Warner & Co., Inc., was held at the office of Baldwin, Hutchins & Todd, No. 120 Broadway, Borough of Manhattan, New York City, on the 12th day of June, 1925, at 11:45 o'clock A. M.

There were present at said meeting Messrs. Henry Pfeiffer, Charles A. Pennock and Roger S. Baldwin, constituting a majority of the board. Those absent were Messrs. G. A. Pfeiffer and Edward Kallenbach.

The President of the Company, Mr. Henry Pfeiffer, presided, and called the meeting to order, and Mr. E. B. Benson, the secretary of the Company, acted as secretary of the meeting.

The secretary presented an agreement and written waiver of notice, signed by all of the directors, which was ordered to be placed on file.

On motion duly made, seconded and unanimously carried, the following preambles and resolutions were adopted:

"Whereas, the common stock of this corporation has been increased, pursuant to a resolution duly adopted at a special meeting of the common and preferred stockholders, held on the 16th day of April, 1925, from Eighty Thousand (80,000) shares of the par value of
41 One Hundred Dollars ($100) per share, amounting in the aggregate to Eight Million Dollars ($8,000,000) to One Hundred Thousand (100,000) shares of the par value of One Hundred ($100) per share, amounting in the aggregate to Ten Million Dollars ($10,000,000); and the preferred stock of this corporation has been increased, pursuant to a resolution duly adopted at the said special meeting of stockholders, from Twenty Thousand (20,000) shares of the par value of One Hundred Dollars ($100) a share, amounting in the aggregate to Two Million Dollars ($2,000,000) to Fifty Thousand (50,000) shares of the par value of One Hundred Dollars ($100) per share, amounting in the aggregate to Five Million Dollars ($5,000,000), and

"Whereas the value of the assets of this corporation exceeds the par value of the common and preferred stock now issued by more than Three Million Dollars ($3,000,000); now, therefore, it is

"Resolved, that the proper officers of the corporation are hereby authorized and directed to issue additional common stock to the amount of Two Million Dollars ($2,000,000) par value and additional preferred stock to the amount of One Million Dollars ($1,000,000) par value, and be it

"Further Resolved, that the officers of the corporation be, and they hereby are, authorized and directed to distribute on July 7, 1925, said Two Million Dollars ($2,000,000) of common stock, consisting of
42 Twenty Thousand (20,000) shares of the par value of One Hundred Dollars ($100) each, pro rata to common stockholders of the corporation in the ratio of one (1) share of said common stock to each four (4) shares of common stock held by common stockholders of record at the close of business on July 6th. 1925, and to distribute said One Million Dollars ($1,000,000) of preferred stock, consisting of Ten Thousand (10,000) shares of the par value of One Hundred Dollars ($100) each, pro rata to common stockholders of the corporation in the ratio of one (1) share of said preferred stock to each eight (8) shares of common stock held by common stockholders of record at the close of business on July 6th, 1925."

On motion duly made, seconded, and unanimously carried, it was

"Resolved, that the U. S. Internal Revenue documentary stamps required to be affixed to the stubs of the certificates of new common

and preferred stock to be issued, such stamps amounting to the sum of Fifteen Hundred Dollars ($1,500), be paid for by the corporation."

* * * * * * *

Upon motion duly made, seconded, and carried, the foregoing minutes as read were adopted as and for the minutes of this meeting.

There being no further business to come before the meeting, it was, on motion duly made, seconded, and carried, adjourned.

(Signed) ERNEST B. BENSON, *Secretary.*

43 *Schedule No. 6*

William R. Warner & Co., Inc.

Minutes of Special Meeting of Board of Directors

A Special meeting of the Board of Directors was held at the office of the Company, No. 113 West 18th Street, Borough of Manhattan, New York City, on the 30th day of November 1926, at 9:50 o'clock in the forenoon.

There were present: Messrs. Henry Pfeiffer, Gustavus A. Pfeiffer, Edward Kallenbach, Charles A. Pennock, constituting a majority of the Board.

Mr. Henry Pfeiffer took the chair and called the meeting to order, and Mr. E. B. Benson acted as secretary of the meeting.

Waiver of notice of the meeting subscribed to by all of the directors of the Company, was presented by the Secretary, and was ordered to be placed on file.

* * * * * * *

Upon motion duly made, seconded, and unanimously carried, the following preambles and resolutions were adopted:

"Whereas, the Preferred Stock of this Corporation has been increased pursuant to a resolution duly adopted at a special meeting of the Common and Preferred Stockholders held on the 16th day of April 1925, from twenty thousand (20,000) shares of the par value of One Hundred Dollars ($100) a share, amounting in the aggregate to Two Million Dollars ($2,000,000.00) to fifty thousand shares of the par value of One Hundred Dollars ($100.00) a share amounting in the aggregate to Five Million Dollars ($5,000,000.00) of which increase ten thousand (10,000) shares aggregating in par value One Million Dollars ($1,000,000.00) were distributed on July 7, 1925, to Common Stockholders of record on July 6, 1925, as a stock dividend, leaving unissued twenty thousand (20,000) of the above shares of preferred stock, and

44

"Whereas, the value of the assets of this corporation exceeds the par value of the common and prefererd stock now issued by more than One Million Dollars ($1,000,000.00); now, therefore, be it

"Resolved, that the proper officers of this corporation be, and they hereby are, authorized and directed to issue additional preferred stock to the amount of One Million Dollars ($1,000,000.00) and be it

"Further Resolved, that the officers of this corporation be and they hereby are authorized and directed to distribute on December

31, 1926, said One Million Dollars ($1,000,000.00) of Preferred Stock consisting of Ten Thousand (10,000) shares at the par
45 value of One Hundred Dollars ($100.00) per share each, pro rata to common stockholders of this corporation in the ratio of one (1) share of said preferred stock to each ten (10) shares of common stock held by common stockholders of record at the close of business on December 30, 1926."

Upon motion duly made, seconded, and unanimously carried, it was

"Resolved, that the U. S. Internal Revenue documentary stamps required to be affixed to the stubs of the certificates of new preferred stock to be issued, such stamps amounting to the sum of Five Hundred Dollars ($500.00) be paid for by the corporation."

* * * * * * *

Upon motion duly made, seconded, and carried the foregoing minutes as read were approved as and for the minutes of this meeting.

Upon motion duly made, seconded, and carried, the meeting adjourned.

(Signed) Ernest B. Benson, *Secretary.*

Schedule No. 7

William R. Warner & Co., Inc.

Minutes of Special Meeting of Stockholders

A Special Meeting of the preferred and common stockholders of William R. Warner & Co., Inc., was held at the office of the
46 corporation, No. 113 West 18th Street, Borough of Manhattan, City, County, and State of New York, on the 27th day of November 1928, at ten o'clock A. M.

The meeting was called to order by Mr. Henry Pfeiffer, who, upon motion, was unanimously chosen Chairman, and Mr. E. B. Benson, Secretary of the corporation, was appointed Secretary of the meeting.

The Secretary then stated that a notice of the meeting, together with a proxy, had been mailed to each common and preferred stockholder of record on November 6, 1928, in accordance with the by-laws and Certificate of Incorporation of the corporation, and the Laws of the State of Delaware. A copy of the notice and of the proxy were ordered to be appended to the minutes of this meeting.

The Secretary then stated that according to the list of common and preferred stockholders as contained in the stock ledger, which was then opened and made available for inspection, there were present in person the following:

Name of stockholder	Number of shares	
	Common	Preferred
Henry Pfeiffer	24,235	79
E. B. Benson	None	[illegible]

The Secretary then stated that there were represented by proxy common stockholders owning 74,665 shares of common stock and preferred stockholders owning 29,404 shares of preferred stock, being more than a majority in interest of all of the common stock and more than a majority interest of all of the preferred stock of said William R. Warner & Co., Inc.

47 The proxies presented were ordered to be filed with the Secretary of the meeting.

The Secretary then read the minutes of the special meeting of the Board of Directors of the corporation held on the 5th day of November 1928, at 11:30 o'clock A. M., proposing an amendment to the Certificate of Incorporation of the corporation for the purpose of increasing the capital stock of the corporation from the sum of Fifteen Million Dollars ($15,000,000), consisting of Five Million Dollars ($5,000,000) of Preferred Stock and Ten Million Dollars ($10,000,000) of Common Stock, to the sum of Twenty-five Million Dollars ($25,000,000), to consist of Fifteen Million Dollars ($15,000,000) of Preferred Stock and Ten Million Dollars ($10,000,000) of Common Stock, and calling a special meeting of the Common and Preferred stockholders to vote upon such proposed amendment and increase of capital stock. At such special meeting of the Board of Directors, Messrs. E. B. Benson and Danforth Geer, Jr., were appointed judges to act at this special meeting of stockholders.

The Chairman thereupon directed that a vote of the Common and Preferred Stockholders by classes be taken by ballot upon the following resolution:

"Resolved, that the proposal of the Board of Directors that the Certificate of Incorporation of William R. Warner & Co., Inc., be amended by striking out all of the paragraph or article thereof numbered 'Fourth' as amended, to wit:

"'Fourth. The total authorized capital stock of the Corpora-

48 tion is fifty thousand (50,000) shares of Preferred Stock of the par value of One Hundred Dollars ($100) per share amounting in the aggregate to Five Million Dollars ($5,000,000) and one hundred thousand (100,000) shares of common stock of the par value of One Hundred Dollars ($100) per share amounting in the aggregate to Ten Million Dollars ($10,000,000).

"'The said fifty thousand (50,000) shares of Preferred Stock shall be entitled to receive, when and as declared, from the surplus or net profits of the Company, yearly dividends at the rate of six per centum (6%) per annum and no more, payable quarterly on the first weekday of October, January, April, and July beginning in January 1921. The dividends on the Preferred Stock shall be cumulative and shall be payable before any dividend on the Common Stock shall be paid or set apart, so that if in any year dividends amounting to six per cent (6%) shall not have been paid thereon, the deficiency shall be payable before any dividend shall be paid upon or set apart for the Common Stock. Whenever all cumulative dividends on the Preferred Stock for all previous years shall

have been declared and shall have become payable, and the accrued quarterly installments for the current year shall have been declared and the company shall have paid such cumulative dividends for previous years and such accrued quarterly installments or shall have set aside from its surplus or net profits a sum sufficient
49 for the payment thereof, the Board of Directors may declare dividends on the Common Stock payable then or thereafter, out of any remaining surplus or net profits. In the event of any liquidation or dissolution or winding up of the corporation (whether voluntary or involuntary) the holders of the Preferred Stock shall be entitled to be paid in full, both the par amount of their shares and the unpaid dividends accrued thereon, before any amount shall be paid to the holders of the Common Stock. Thereafter the remaining assets and funds shall be divided and paid to the holders of the Common Stock, according to their respective shares. The holders of the Preferred Stock shall not be entitled to vote. Such Preferred Stock shall be redeemable by the company or may be purchased by it on any quarterly dividend day in amounts of not less than one hundred (100) shares at the price of One Hundred and Five Dollars ($105) per share, together with all unpaid dividends accrued thereon.'"

and by inserting in lieu thereof, the following:

"Fourth. The total authorized capital stock of the Corporation is One Hundred and Fifty Thousand (150,000) shares of Preferred Stock of the par value of One Hundred Dollars ($100) per share amounting in the aggregate to Fifteen Million Dollars ($15,-
50 000,000) and one hundred thousand (100,000) shares of common stock of the par value of One Hundred Dollars ($100) per share amounting in the aggregate to Ten Million Dollars ($10,000,000).

"The said One Hundred and Fifty Thousand (150,000) shares of Preferred Stock shall be entitled to receive when and as declared, from the surplus or net profits of the Company, yearly dividends at the rate of six percentum (6%) per annum and no more, payable quarterly on the first weekday of January, April, July, and October. The dividends on the Preferred Stock shall be cumulative and shall be payable before any dividend on the Common Stock shall be paid or set apart, so that if in any year dividends amounting to six per cent (6%) shall not have been paid thereon, the deficiency shall be payable before any dividend shall be paid upon or set apart for the Common Stock. Whenever all cumulative dividends on the Preferred Stock for all previous years shall have been declared and shall have become payable, and the accrued quarterly installments for the current year shall have been declared and the company shall have paid such cumulative dividends for previous years and such accrued quarterly installments or shall have set aside from its surplus or net profits a sum sufficient for the payment thereof, the Board of Directors may declare dividends on the Common Stock payable then
51 or thereafter, out of any remaining surplus or net profits. In

the event of any liquidation or dissolution or winding up of the corporation (whether voluntary or involuntary) the holders of the Preferred Stock shall be entitled to be paid in full, inclu the par amount of their shares and the unpaid dividends accrued thereon, before any amount shall be paid to the holders of the Common Stock. Thereafter the remaining assets and funds shall be divided and paid to the holders of the Common Stock, according to their respective shares. The holders of the Preferred Stock shall not be entitled to vote. Such Preferred Stock shall be redeemable by the company or may be purchased by it on any quarterly dividend day in amounts of not less than one hundred (100) shares at the price of One Hundred and Five Dollars ($105) per share, together with all unpaid dividends accrued thereon;"

be, and the same is hereby, authorized and approved, and that said Certificate of Incorporation be and it is hereby amended accordingly.

The stockholders thereupon proceeded to vote by classes by ballot, and after all ballots had been cast, the polls were declared closed.

The judges, after counting the ballots, reported that 99,000 shares of Common Stock were voted for such proposed amendment and that no shares of Common Stock were voted against the same, the said 99,000 shares of stock being more than a majority of the
52 Common Stock issued and outstanding, and that 29,593 shares of Preferred Stock were voted for such proposed amendment and no shares of Preferred Stock were voted against the same, the said 29,593 shares of Preferred Stock being more than a majority of all of the Preferred Stock issued and outstanding.

The Chairman thereupon declared the proposed amendment to the Certificate of Incorporation adopted.

The foregoing minutes as read were approved as and for the minutes of this meeting.

There being no further business to come before the meeting, it was, upon motion made, seconded, and carried, adjourned.

(Signed) Ernest B. Benson, *Secretary.*

Schedule No. 8

William R. Warner & Co., Inc.

Special Meeting of Board of Directors

A special meeting of the Board of Directors of William R. Warner & Co., Inc., was held at the office of the Company, No. 113 West 18th Street, Borough of Manhattan, City, County, and State of New York, on the 18th day of December 1928, at 10:00 o'clock A. M.

There were present at said meeting: Messrs. Henry Pfeiffer, Gustavus A. Pfeiffer, Edward Kallenbach, constituting a majority of the Board, those absent being Messrs. Charles A. Pennock and Roger S. Baldwin.

53 The President of the Corporation, Mr. Henry Pfeiffer, presided and called the meeting to order, and Mr. E. B. Benson,

the Secretary of the corporation, acted as Secretary of the meeting.

The Secretary presented a written waiver of notice, signed by all of the Directors, which was ordered to be placed on file.

On motion duly made, seconded, and unanimously carried, the following preambles and resolutions were adopted:

"Whereas, the Preferred Stock of this Corporation has been increased, pursuant to a resolution duly adopted at a special meeting of the Common and Preferred Stockholders, held on the 27th day of November 1928, from Fifty Thousand (50,000) shares of the par value of One Hundred Dollars ($100) per share, amounting in the aggregate to Five Million Dollars ($5,000,000), to One hundred fifty thousand (150,000) shares of the par value of One Hundred Dollars ($100) per share, amounting in the aggregate to Fifteen Million Dollars ($15,000,000), and

"Whereas, the value of the assets of this corporation exceeds the par value of the Common and Preferred Stock now issued by more than Five Million Dollars ($5,000,000); Now, Therefore, it is

"Resolved, that the proper officers of this corporation are hereby authorized and directed to issue additional Preferred Stock
54 to the amount of Five Million Dollars ($5,000,000) par value, and be it

"Further Resolved, that the officers of this corporation be, and they hereby are, authorized and directed to distribute on December 31, 1928, said Five Million Dollars ($5,000,000) of Preferred Stock, consisting of Fifty Thousand (50,000) shares of the par value of One Hundred Dollars ($100) each, pro rata to Common Stockholders of this corporation in the ratio of One (1) share of said Preferred Stock to each Two (2) shares of Common Stock held by Common Stockholders of record at the close of business on December 1, 1928."

On motion duly made, seconded, and unanimously carried, it was

"Resolved, that the United States Internal Revenue documentary stamps required to be affixed to the stubs of the certificates of new Preferred Stock to be issued, such stamps amounting to the sum of Twenty-five Hundred Dollars (2,500), be paid for by this corporation."

. . . . . .

Upon motion duly made, seconded, and carried, the foregoing minutes, as read, were approved as and for the minutes of this meeting.

Upon motion duly made, seconded, and carried, the Meeting thereupon adjourned.

(Signed) ERNEST B. BENSON, *Secretary.*

55 *Schedule No. 9*

William R. Warner Corporation

Special Meeting of Board of Directors

A special meeting of the Board of Directors of William R. Warner Corporation was held at the office of the Company, 113 West 18th

Street, New York City, on the 24th day of April 1931, at 11:00 o'clock in the forenoon.

The following persons were present: Messrs. Henry Pfeiffer, Gustavus A. Pfeiffer, Edward Kallenbach, constituting a quorum of the Board.

Mr. Henry Pfeiffer, President of the Corporation, acted as President of the meeting, and Mr. Ernest B. Benson, Secretary of the Corporation, acted as Secretary of the meeting.

Waiver of Notice of the meeting subscribed to by all of the Directors of the Corporation was presented by the Secretary, and was ordered placed on file.

On motion duly made, seconded, and unanimously carried, the following preambles and resolutions were adopted:

"Whereas the Preferred Stock of this Corporation has been increased pursuant to a resolution duly adopted at a Special Meeting of the Common and Preferred Stockholders, held on the 27th day of November 1928, from fifty thousand (50,000) shares of the
56 par value of one hundred dollars ($100) per share, amounting in the aggregate to five million dollars ($5,000,000) to one hundred fifty thousand (150,000) shares of the par value of one hundred dollars ($100) per share, amounting in the aggregate to fifteen million dollars ($15,000,000), of which increase fifty thousand (50,000) shares, aggregating in par value five million dollars ($5,000,000) were distributed on December 31st, 1928, to Common Stockholders of record on December 1st, 1928, as a stock dividend, leaving unissued fifty thousand (50,000) of the above shares of Preferred Stock, and

"Whereas the value of the assets of this corporation exceeds the par value of the Common and Preferred Stock now issued by more than ~~two million~~ five hundred thousand dollars ($2,500,000).

"Now, therefore, it is Resolved, that the proper Officers of this Corporation are hereby authorized and directed to issue additional Preferred Stock to the amount of two million five hundred thousand dollars ($2,500,000) par value.

"And be it Further Resolved, that the Officers of this Corporation, be and they hereby are authorized and directed to distribute on April 27th, 1931, said two million five hundred thousand dollars ($2,500,000) of Preferred Stock, consisting of twenty-five thousand (25,000) shares of the par value of one hundred dollars ($100) each,
57 pro rata to Common Stockholders of this Corporation in the ratio of one (1) share of said Preferred Stock to each four (4) shares of Common Stock held by Common Stockholders of record at the close of business on April 2nd, 1931."

On motion duly made, seconded, and unanimously carried, it was

"Resolved, that the United States Internal Revenue Documentary Stamps required to be affixed to the stubs of the certificates of new Preferred Stock to be issued, such stamps amounting to the sum of one thousand two hundred fifty dollars ($1,250), be paid for by this Corporation.

Upon motion duly made, seconded, and carried the foregoing minutes as read were approved as and for the minutes of this meeting.

Upon motion duly made, seconded, and carried, the meeting adjourned.

(Signed) ERNEST B. BENSON, *Secretary.*

58 *Schedule No. 10*

William R. Warner Corporation and subsidiary and affiliated companies

Consolidated balance sheet as at January 1, 1921, 1929, 1931 & December 31, 1931

ASSETS

	Jan. 1, 1921	Jan. 1, 1929	Jan. 1, 1931	Dec. 31, 1931
Current and Working Assets:				
Cash on Hand and in Banks	$254,232.49	$1,264,905.78	$1,178,854.18	$1,074,359.02
Investment in Marketable Securities		9,063,154.22	5,216,487.88	4,863,731.89
Trade Accounts & Notes Receivable (Less Reserves)	1,822,007.89	4,541,769.21	3,955,379.24	3,158,833.01
Miscellaneous Accounts and Notes Receivable and Accruals	45,332.15	169,494.46	158,089.89	219,718.80
Inventories	3,041,845.23	3,929,125.96	4,373,973.63	3,417,770.42
Total Current and Working Assets	5,163,417.76	18,968,449.63	14,882,784.82	12,734,413.14
Miscellaneous Investments and Advances		927,809.79	861,276.13	584,472.76
Fixed Assets (Less Reserves)	2,684,117.59	3,495,323.22	4,799,588.93	4,870,362.56
Trademarks, Tradenames and Formulae	2,558,142.51	3,833,814.36	10,718,803.58	11,284,427.21
Deferred Charges	158,259.64	588,359.65	873,357.73	875,674.77
	10,563,937.50	27,813,756.65	32,135,811.19	30,349,370.44

LIABILITIES

	Jan. 1, 1921	Jan. 1, 1929	Jan. 1, 1931	Dec. 31, 1931
Current Liabilities:				
Notes Payable	$769,250.00		$1,089,000.00	
Accounts Payable—Trade	488,698.33	$678,541.41	624,165.89	$394,485.37
Miscellaneous Accounts Payable and Accruals	230,368.14	595,048.86	458,157.73	459,455.32
Dividends Payable	23,822.41	261,241.72	296,970.83	282,725.02
Income Tax	347,640.50	486,039.12	305,214.94	302,713.31
Total Current Liabilities	1,859,779.38	2,020,871.11	2,773,509.39	1,439,379.02
Mortgage	787,500.00		23,808.75	
Capital Stock:				
Preferred:				
Authorized	2,000,000.00	15,000,000.00	15,000,000.00	15,000,000.00
Less Unissued and in Treasury	1,073,700.00	6,569,600.00	6,895,500.00	5,627,800.00
Outstanding	926,300.00	8,430,400.00	8,104,500.00	9,372,200.00
Common:				
Authorized	300,000.00	10,000,000.00	10,000,000.00	10,000,000.00
Less in Treasury				50,000.00
Outstanding	300,000.00	10,000,000.00	10,000,000.00	9,950,000.00
Outstanding Preferred & Common	1,226,300.00	18,430,400.00	18,104,500.00	19,322,200.00
Stock of Subsidiary Companies in Hands of Public and Employees:				
Preferred	698,200.00	605,100.00	661,100.00	615,838.50
Common (at book value)		503.37	700.90	833.88
	698,200.00	605,603.37	661,800.90	616,672.38
Surplus:				
Appropriated (Statutory and Special reserves)		25,721.79	149,697.62	125,512.46
Profit and Loss (Earned Surplus)	5,992,158.12	6,731,160.38	10,422,494.53	8,845,606.58
	5,992,158.12	6,756,882.17	10,572,192.15	8,971,119.04
	10,563,987.50	27,813,756.65	32,135,811.19	30,349,370.44

59 *Schedule 10* (Continued).

William R. Warner Corporation and Subsidiary and Affiliated Companies

Reconciliation of Surplus Account for the Year Ending December 31, 1931

Balance at January 1, 1931			$10,422,494.53
Additions:			
Adjustment of income tax reserve of previous year		$4,228.85	
Transfers—Statutory and special reserves		23,730.00	
Sundry additions—Net		579.83	
Net profit for year after providing for income tax		2,668,663.76	
			2,697,202.44
			13,119,696.97
Deductions:			
Cash dividends paid—			
On common stock	$797,333.33		
On preferred stock	624,071.58		
		1,421,404.91	
Stock dividends paid in preferred stock		2,500,000.00	
Premium paid on purchase of common stock		100,000.00	
Special depreciation of fixed assets		40,602.74	
Income taxes, prior years		4,951.34	
Minority stockholders' portion of profits		132.98	
Adjustment re: Chamberlain Medicine Co		37,188.35	
Difference in exchange on opening balance		169,810.07	
			4,274,090.39
Balance at Dec. 31, 1931			8,845,606.58

60 *Schedule No. 11*

William R. Warner Corporation

Comparative balance sheet as at January 1, 1921, 1929, 1931, & December 31, 1931

ASSETS

	Jan. 1, 1921	Jan. 1, 1929	Jan. 1, 1931	Dec. 31, 1931
urrent:				
Cash on Hand and in Banks	150,437.43	471,953.97	136,961.95	150,226.36
Investments in Marketable Securities		8,619,160.47	4,685,547.88	4,788,775.23
Trade Accounts & Notes Receivable (Less Reserves)	1,275,019.01	1,856,222.31		
Miscellaneous Accounts and Notes Receivable and Accruals	30,163.23	119,846.55	31,962.93	35,182.26
Inventories	410,128.15	688,803.41		
Total Current Assets	1,865,807.82	11,755,936.71	4,854,472.76	4,974,183.85
Investments in Subsidiary Companies	3,073,906.87	5,552,417.41	12,642,222.14	12,731,424.66
Intercompany Accounts Receivable	650,267.67	4,443,454.09	4,120,536.78	7,846,306.05
Miscellaneous Investments & Advances		555,636.13	247,375.00	317,367.66
Fixed Assets (less Reserves)	389,688.42	212,382.18		
Trademarks, Tradenames, & Formulae		286,270.33		
Deferred Charges	50,494.72	165,133.79		
	6,030,165.50	22,965,280.64	21,864,606.68	25,869,482.22

61 *Schedule 11* (Continued)

Comparative balance sheet as at January 1, 1921, 1929, 1931, & December 31, 1931 —Continued

LIABILITIES

	Jan. 1, 1921	Jan. 1, 1929	Jan. 1, 1931	Dec. 31, 1931
Current:				
Notes Payable	554, 230. 00			
Accounts Payable—Trade	292, 391. 04	206, 814. 80		
Miscellaneous Accounts Payable and Accruals	140, 232. 52	177, 341. 33		
Dividends Payable	11, 497. 16	251, 395. 80	260, 232. 66	279, 057. 89
Income Tax	32, 817. 26	97, 645. 88		
Total Current Liabilities	1, 031, 187. 98	733, 197. 81	260, 232. 66	279, 057. 89
Intercompany Accounts Payable	2, 562, 908. 93			
Capital Stock:				
Preferred (less unissued and in Treasury)	926, 300. 00	8, 430, 400. 00	8, 104, 500. 00	9, 372, 200. 00
Common (less Treasury)	300, 000. 00	10, 000, 000. 00	10, 000, 000. 00	9, 950, 000. 00
Surplus:				
Reserve for Net Assets	188, 099. 93	188, 099. 93	907, 829. 60	907, 829. 60
Profit and Loss	1, 021, 668. 66	3, 613, 582. 90	2, 592, 044. 42	5, 360, 394. 73
	6, 030, 165. 50	22, 965, 280. 64	21, 864, 606. 68	25, 869, 482. 22

William R. Warner Corporation

Reconciliation of surplus for the year ended December 31, 1931

Balance at December 31, 1930			$2, 592, 044. 42
Additions:			
Dividends from Subsidiary Companies:			
Domestic		6, 870, 810. 00	
Foreign		7, 485. 59	
			6, 878, 295. 59
			9, 470, 340. 01
Deductions:			
Net Loss for the Year		127, 153. 99	
Cash Dividends Paid—			
On Common Stock	797, 333. 33		
On Preferred Stock	585, 457. 96		
		1, 382, 791. 29	
Stock Dividends paid in Preferred Stock		2, 500, 000. 00	
Premium paid on purchase of Common Stock		100, 000. 00	
			4, 109, 945. 28
Balance at December 31, 1931			$5, 360, 394. 73

62 *Schedule No. 12*

William R. Warner & Co., Inc.

Year	Consolidated taxable income (Intercompany items eliminated)	Earnings of parent company (Including dividends received from subsidiaries)	Cash dividends	
			Preferred	Common
1920 (1 mo.)	$128, 211. 89	$18, 270. 37	$9, 000. 00	$13, 500. 00
1921	1, 324, 699. 31	89, 211. 08	62, 447. 84	73, 500. 00
1922	1, 881, 293. 11	6, 674, 171. 76	120, 764. 85	333, 000. 00
1923	2, 937, 270. 19	2, 228, 878. 80	116, 406. 34	299, 000. 00
1924	3, 342, 012. 68	750, 692. 20	156, 955. 41	400, 000. 00
1925	3, 904, 720. 16	4, 082, 471. 20	150, 311. 35	540, 000. 00
1926	4, 158, 726. 46	2, 314, 269. 18	232, 993. 14	600, 000. 00
1927	4, 029, 340. 74	3, 061, 092. 38	235, 332. 67	800, 000. 00
1928	3, 679, 918. 31	8, 493, 617. 11	242, 373. 93	800, 000. 00
1929	3, 393, 283. 94	1, 580, 336. 02	544, 449. 28	800, 000. 00
1930	2, 148, 901. 85	1, 562, 182. 08	535, 814. 92	737, 569. 48
1931	2, 380, 079. 34	7, 819, 939. 61	622, 386. 32	797, 333. 33
Total	$33, 308, 457. 98	$38, 675, 131. 79	$3, 032, 236. 05	$6, 193, 902. 81

NOTE 1.—The earnings of the Pennsylvania corporation for the years 1908 to December 1920 are not considered material to the issues now under consideration and are not shown on this schedule.

NOTE 2.—The "cash dividends" column does not include the redemption of the 8,500 shares of preferred stock in December 1931.

INDIVIDUAL INCOME TAX RETURN

FOR NET INCOMES FROM SALARIES OR WAGES OF MORE THAN $3,000
AND INCOMES FROM BUSINESS, PROFESSION, RENTS, OR SALE OF PROPERTY

For Calendar Year 1931

File This Return With the Collector of Internal Revenue for Your District on or Before March 15, 1932

FIRST NAME AND ADDRESS PLAINLY BELOW

MRS. ANNIE M. PFEIFFER
370 Riverside Drive,
New York (City) New York (County) New York (State)
Occupation None

No. 2281
Serial Number 391382
Collector's District S. New York

1. Are you a citizen or resident of the United States? Yes
2. If you filed a return for 1930, to what Collector's office was it sent? 3rd N.Y.
3. Is this a joint return of husband and wife? No
4. State name of husband or wife if a separate return was made and the Collector's office to which it was sent. Henry Pfeiffer 3rd N.Y. dist
5. Were you married and living with husband or wife on the last day of your taxable year? Yes
6. If not, were you on the last day of your taxable year separated by decree of divorce or separate maintenance, or living apart? —
7. If your status as respect to questions 5 and 6 changed during the year, state date and nature of change. —
8. How many dependent persons (other than husband or wife) under 18 years of age or incapable of self-support were receiving their chief support from you on the last day of your taxable year? None

INCOME

1. Salaries, Wages, Commissions, etc. (State name and address of employer)	125,660.67			
2. Income from Business or Profession. (State business)				
3. Interest on Bank Deposits, Notes, Corporation Bonds, etc. (Except interest on tax-free covenant bonds)		10	439	65
4. Interest on Tax-free Covenant Bonds Upon Which a Tax was Paid at Source				
5. Income from Partnerships. (State name and address) 11-29-33 Widow A-5 12-12-35				
6. Income from Fiduciaries. (State name and address)				
7. Rents and Royalties. (From what property?)				
8. Profit from Sale of Real Estate, Stocks, Bonds, etc. (From what?)				
9. Taxable Interest on Liberty Bonds, etc. (From what?)		2	762	50
10. Dividends on Stock of Domestic Corporations		207	165	60
11. Other Income (including dividends on stock of foreign corporations). (State nature of item) DEPT MAR 14 '32				
(a)				
(b)				
12. TOTAL INCOME (Items 1 to 11)				810 367 75

DEDUCTIONS

13. Interest Paid			62	96
14. Taxes Paid. (Explain in Schedule F)		7	217	16
15. Losses by Fire, Storm, etc. (Explain in Schedule F and if part of loss is recovered, state amount and how)				
16. Bad Debts. (Explain in Schedule F)				
17. Depreciation. (Explain in Schedule F)		69	885	02
18. Other Deductions Authorized by Law. (Explain in Schedule F)		17	287	50
19. TOTAL DEDUCTIONS (Items 13 to 18)				94 458 64
20. Net Income (Item 12 minus Item 19)				215 916 11

EARNED INCOME CREDIT

21. Earned Income (not over $20,000)	$5000	00
22. Less Personal Exemption and Credit for Dependents	None	
23. Balance (Item 21 minus 22)	$5000	00
24. Amount taxable at 1½% (not over $4,000)	$4000	00
25. Amount taxable at 3% (not over $8,000)	1000	00
26. Amount taxable at 6% (Balance over $8,000 of Item 23)		
27. Normal Tax (1½% of Item 24)	$ 60	00
28. Normal Tax (3% of Item 25)	30	00
29. Normal Tax (6% of Item 26)		
30. Surtax on Item 21		
31. Tax on Earned Net Income (total of Items 27 to 30)	$ 90	00
32. Credit of 25% of Tax (not over 25% of Items 24, 25, 26, and 29)	$ None	

COMPUTATION OF TAX (See Instruction 29)

33. Net Income (Item 20 above)			$215925	11
34. Liberty Bond Interest (Item 9)	$ 2762	50		
35. Dividends (Item 10)	207165	60		
36. Credit for Dependents				
37. Personal Exemption				
38. Total of Items 34 to 37			209928	10
39. Balance (Item 33 minus 38)			$ None	
40. Amount taxable at 1½% (not over $4,000)				
41. Balance (Item 39 minus 40)				
42. Amount taxable at 3% (not over $4,000)				
43. Amount taxable at 6% (Item 41 minus 42)				
44. Normal Tax (1½% of Item 40)			$	
45. Normal Tax (3% of Item 42)				
46. Normal Tax (6% of Item 43)				
47. Surtax on Item 20 (complete instruction 32)			34843	08
48. Tax on Net Income (total of Items 44 to 47)			$	
49. Tax on Capital Gain or Loss (12½% of Col. 6, Sched. D)				
50. Total of or difference between Items 48 and 49			67855	58
51. Less Credit of 25% of Tax on Earned Income (Item 32)				
52. Total Tax (Item 50 minus 51)			$	
53. Less Income Tax Paid at Source				
54. Income Tax paid to a foreign country or U. S. possession				
55. Balance of Tax (Item 52 minus Items 53 and 54)			67855	58

AFFIDAVIT

I swear (or affirm) that this return, including the accompanying schedules and statements, has been examined by me, and to the best of my knowledge and belief, is a true and complete return made in good faith for the taxable year stated, pursuant to the Revenue Act of 1928 and the Regulations issued thereunder.

Sworn to and subscribed before me this 14th day of MARCH, 1932.

Annie M. Pfeiffer
(Signature of taxpayer)

(Address of agent)

An extended return cannot be granted unless 90% of the tax estimated and shown on the return is paid on or before the date fixed for filing the return. Remittances and drafts will be accepted only if payable at par.

7-

SCHEDULE A—INCOME FROM BUSINESS OR PROFESSION (See Instruction 3)

1. Total receipts from business or profession (State kind of business)

Cost or Gross Sale

2. Labor
3. Material and supplies
4. Merchandise bought for sale
5. Other costs (Itemize below or on separate sheet)
6. Plus inventory at beginning of year
7. Total (Lines 2 to 6)
8. Less inventory at end of year
9. Net Cost or Gross Sale (Line 7 minus Line 8)

Enter "C," or "C or M," on Lines 6 and 8 to indicate whether inventories are valued at cost, or cost or market, whichever is lower

Gross Business Deductions

10. Salaries not included on "Labor," in Line 2. (Do not deduct compensation for your services)
11. Interest on business indebtedness to others
12. Taxes on business and business property
13. Losses (explain in table at foot of page)
14. Bad debts arising from sales or services
15. Depreciation, obsolescence, and depletion (explain in table provided at foot of page)
16. Rents, royalties, and other expenses (Itemize below or on separate sheet)
17. Total (Lines 10 to 16)
18. Total Deductions (Line 9 plus Line 17)
19. Net Profit (Line 1 minus Line 18) (Enter on Page 2)

Explanation of deductions claimed on Lines 5 and 16

SCHEDULE B—INCOME FROM RENTS AND ROYALTIES (See Instruction 7)

1. Kind and Location of Property	2. Amount Received	3. Cost or Value as of March 1, 1913, if Acquired Thereafter	4. Depreciation (Section to be allowed at foot of page)	5. Interest	6. Taxes, Repairs, and Other Expenses (Itemize below)	7. Net Profit (Enter on Page 2)

Explanation of deductions claimed in Column 6

SCHEDULE C—PROFIT FROM SALE OF REAL ESTATE, STOCKS, BONDS, ETC. (See Instruction 8)

1. Kind and Location of Property	2. Date Acquired	3. Amount Realized	4. Cost or Value as of March 1, 1913, if Acquired Thereafter	5. Depreciation (Section to be allowed at foot of page)	6. Expenses of Sale	7. Net Profit (Enter on Page 2)

State how property was acquired

SCHEDULE D—CAPITAL NET GAIN OR LOSS FROM SALE OF ASSETS HELD MORE THAN TWO YEARS (See Instruction 9a)

1. Kind and Location of Property	2. Date Acquired (Mo. Day Yr.)	3. Date Sold (Mo. Day Yr.)	4. Amount Received	5. Depreciation Allowed (See Instruction 9b)	6. Cost or Value as of March 1, 1913, if Acquired Thereafter	7. Depreciation (See Instruction 9b)	8. Expenses of Sale	9. Net Gain or Loss (Enter in Item 10)
2000 shs. William R. Warner Corp. preferred	12/31/28	12/29/31	200,000 00		19,900 00			180,100 00

State how property was acquired William R.Warner Corp.Preferred stock received as Stock Dividend.See note below

SCHEDULE E—INTEREST ON LIBERTY BONDS AND OTHER OBLIGATIONS OR SECURITIES (See Instruction 9)

1. Obligations on Securities	2. Interest Received or Accrued	3. Amount Owned	4. Purchase Amount, Par or Face Value	5. Amount Owned at Expense of Estate	6. Interest on Amount in Column 5 (Enter in Item 9)
(a) Obligations of a State, Territory, or political subdivision thereof, or the District of Columbia	16310 44		All		
(b) Securities issued under Federal Farm Loan Act, or under such Act as amended, Treasury Bills, and Treasury Certificates of Indebtedness	5625 00		All		
(c) Liberty 3½% Bonds and other obligations of United States issued on or before September 1, 1917, and obligations of U. S. possessions			All		
(d) Liberty 4% and 4½% Bonds, Treasury Bonds, and Treasury Savings Certificates	2975 00	7000 00	$4,000	65000 00	2762 50
(e) Treasury Notes			None		

SCHEDULE F—EXPLANATION OF DEDUCTIONS CLAIMED IN ITEMS 1, 14, 16, 17, AND 18

Item 14- New York State Income Tax - $7,217.16

Item 18- Loss from Sale of Stocks - Schedule attached

Note in reference to Schedule D: The determination of the basis of the Wm. R. Warner Corporation stock dividend is complicated. The method and valuations used in making computation are on record in the office of Baldwin, Hutchins & Todd, 120 Broadway, New York City. It is requested that the agent make his examination of the correctness of the basis used in that office.

EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED IN SCHEDULES A AND B

1. Kind of Property (If buildings, state material of which constructed)	2. Date Acquired	3. Cost or Other Basis	4. Previous Depreciation Allowances	5. Cost or Value as of March 1, 1913, if Acquired Thereafter (Deduction at Rate of ... Per Cent)	Amount of Depreciation Claimed on 6. Previous years	Amount of Depreciation Claimed on 7. This year

EXPLANATION OF DEDUCTION FOR LOSSES BY FIRE, STORM, ETC., CLAIMED IN SCHEDULE A, AND IN ITEM 18

1. Kind of Property	2. Date Acquired	3. Cost or Value as of March 1, 1913, if Acquired Thereafter	4. Depreciation Allowances	5. Amount of Insurance Collected	6. Deduction Net Loss Claimed

P/L 11-2

65 **Mrs. Annie M. Pfeiffer, 1931**

Schedule F, Item 17—Contributions

Allen Memorial Hospital, Waterloo, Iowa	$12,500.00
American Red Cross, New York, N. Y	250.00
Anti-Saloon League of America, Westerville, Ohio	100.00
Baxter Seminary, Baxter, Tenn	5,000.00
Bethany Evangelical Church, Highland Park, Illinois	15,499.99
Biblical Seminary, New York, N. Y	750.00
Big Brother & Big Sister Federation, Inc., New York, N. Y	25.00
Board of Education of M. E. Church, Chicago, Ill	2,500.00
Board of Foreign Missions of M. E. Church, New York, N. Y	27,750.00
Bryan Memorial University, Dayton, Tenn	100.00
Committee on Cooperation in Latin America, New York, N. Y	300.00
Committee on Wayside Evangelism, New York, N. Y	125.00
Cornell College, Mt. Vernon, Iowa	25,000.00
Cornell M. E. Church, New York, N. Y	75.00
Dakota Wesleyan University, Mitchell, S. D	5,000.00
Evangelical Church, Dubuque, Iowa	1,000.00
Everett Babtist Church, Everett, Wash	150.00
Evangelical Church, Laurel, Mont	25.00
Evangelical Church, Waterloo, Iowa	50.00
Evangelical Theological Seminary, Naperville, Ill	5,000.00
Five Points Mission, New York, N. Y	2,550.00
Greater New York Federation of Churches, New York	1,200.00
Hadley Rescue Hall, New York, N. Y	25.00
Henry Street Settlement Visiting Nurse Service, New York, N. Y	35.00
Iowa Wesleyan College, Mt. Pleasant, Iowa	12,500.00
Jefferson Park M. E. Church, New York, N. Y	150.00
Kansas Wesleyan University, Salina, Kansas	1,000.00
Korean M. E. Church, New York, N. Y	19.00
Methodist Episcopal Church Home, New York, N. Y	262.50
Methodist Episcopal Church, Gloucester, N. J	50.00
National Hymn Sing, New York, N. Y	25.00
Near East College Assn., New York, N. Y	500.00
New York Assn. for the Blind, New York, N. Y	25.00
Near East Foundation, New York, N. Y	50.00
New York Bible Society, New York, N. Y	25.00
New York City Society of M. E. Church, New York	2,550.00
New York Deaconess Assn., M. E. Church, New York	1,309.69
Piney Wood School, Piney Wood, Miss	225.00
Seamen's Church Institute of N. Y., New York, N. Y	10.00
St. Paul's M. E. Church, New York, N. Y	3,758.00
Volunteers of America, New York, N. Y	50.00
Wilmington College, Wilmington, Ohio	5,000.00
Women's Christian College, Japan	275.00
Women's Foreign Missionary Society of M. E. Church College Buildings, Seoul, Korea	25,000.00
Y. M. C. A., New York, N. Y	150.00
Y. W. C. A., New York, N. Y	200.00
	$158,144.18

66 The amount deductible is limited to 15% of the sum of net income (computed without deducting any contributions) and capital net gain.

The computation is as follows:

Gross income	$310,367.75
Less deductions	24,567.62
	$285,800.13
Add Capital Gain	180,000.00
	$465,960.13
15%	69,885.02

Mrs. Annie M. Pfeiffer, 1931

Schedule F, Item 18.—Loss from Sale of Stocks

Name of security	Date acquired	Amount realized	Cost	Loss
Illinois Central Ry. Co.	11/8/30	$1,037.50	$9,300.00	$8,262.50
United States Steel Corporation	8/24/31	3,837.50	8,600.00	4,762.50
United States Steel Corporation	9/10/31	3,837.50	8,100.00	4,262.50
		$8,712.50	$26,000.00	$17,287.50

67 Before United States Board of Tax Appeals

Docket No. 82,616

ANNIE M. PFEIFFER, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

M. Ward Whalen, Esq., and Warren W. Grimes, Esq., for the Petitioner.

Hartford Allen, Esq., and Walter W. Kerr, Esq., for the Respondent.

Memorandum opinion

MURDOCK: The Commissioner determined a deficiency of $125,660.67 in the petitioner's income tax for 1931. The errors assigned by the petitioner are (a) the action of the Commissioner in including in income $629,125, the fair market value of 6,291¼ shares of preferred stock of William R. Warner Corporation received by the petitioner as a dividend upon common stock of the corporation (b) the action of the Commissioner in including in income as a dividend $200,000 received from the redemption of 2,000 shares of preferred stock of the same corporation. The facts have been stipulated and need not be set forth in full here.

The corporation was organized in 1920. Its stock at all times consisted of common and preferred. Each had a par value of $100 per share but they were otherwise essentially different.
68 The authorized capital was increased at several times by capitalizing earnings. There was an increase in 1928 at which time the preferred was increased from $5,000,000 to $15,000,000 and the common was allowed to remain at $10,000,000. The corporation distributed $5,000,000 par value of preferred pro rata to common stockholders on December 31, 1928, and $2,500,000 par value of preferred pro rata to common stockholders on April 27, 1931. Each of these shares had a fair market value of $100 at the date distributed.

The following table shows how the stock was held at the times the distributions were authorized:

Stockholder	Common	Preferred	
		1928	1931
Annie M. Pfeiffer	25,165	2,122	9,642
Gustavus Pfeiffer	49,500	5,895	24,034
Henry Pfeiffer	24,335	79	6,901
C. Leonard Pfeiffer	1,000	270	150
Employees and others		25,938	38,813
	100,000	34,304	79,540

The petitioner received 12,582 shares in the 1928 distribution and 6,291¼ shares in the 1931 distribution. Dividends upon the preferred stock were never in default. There was no accumulation of unpaid dividends on the preferred on April 27, 1931.

The corporation on December 29, 1931, redeemed with cash at par 8,500 shares of preferred including 2,000 shares belonging to the petitioner which she had received in the 1928 distribution.
69 The balance of the shares redeemed belonged 4,500 to Gustavus Pfeiffer and 2,000 to Henry Pfeiffer.

The petitioner reported in her 1931 return a capital gain of $180,-100 as resulting from the redemption of the 2,000 shares after deducting a basis computed for stock received as a stock dividend.

The Commissioner in determining the deficiency eliminated the capital gain and included as dividends $200,000 representing the redemption and $629,125 representing the dividend in preferred stock.

The petitioner contends that the dividend in preferred stock was a stock dividend within the meaning of section 115 (f) of the Revenue Act of 1928, and not subject to tax in 1931. The Board has held otherwise. James H. Torrens, 31 B. T. A. 787; H. C. Gowran, 32 B. T. A. 820. Cf. Tillotson Manufacturing Company, 27 B. T. A. 913; affirmed, 76 Fed. (2d) 189; Koshland v. Helvering, — U. S. — (May 18, 1936).

The Commissioner held that the redemption of the 2,000 shares in 1931 was at such time and in such manner as to be substantially equivalent to a taxable dividend in 1931, within the meaning of section 115 (g) of the Revenue Act of 1928. He erred in this since the distribution was subject to tax as a dividend in 1928 (see cases above cited). Thereafter the shares had a basis for gain or loss to the petitioner of $100 each, and they were redeemed without gain or loss to the petitioner at $100 each in 1931.

Decision will be entered under Rule 50.

Enter:

Entered, June 27, 1936.

70 Before United States Board of Tax Appeals

Docket No. 82616

ANNIE M. PFEIFFER, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

Decision

Pursuant to the Board's Memorandum Opinion entered June 27, 1936, the respondent filed a proposed recomputation and notice of settlement on July 13, 1936. On July 18, 1936, the petitioner filed a notice of acquiescence to the recomputation filed by the respondent. Therefore, it is

Ordered and decided, that there is a deficiency for the year 1931 in the amount of $89,841.75.

Entered, July 22, 1936.

[SEAL] (S.) J. E. MURDOCK,
Member, United States Board of Tax Appeals.

71 In United States Circuit Court of Appeals

[Title omitted.]

Petition for review.

Filed Aug. 7, 1936

To the Honorable Judges of the United States Circuit Court of Appeals for the Second Circuit:

Now comes the Petitioner, by her attorney, Roger S. Baldwin, and respectfully shows:

Jurisdiction for Review

I. This is a proceeding for a review by the United States Circuit Court of Appeals of the Second Circuit of a Decision of the United States Board of Tax Appeals entered July 22, 1936, Docket No. 82616, partially affirming the deficiency heretofore determined by the Commissioner of Internal Revenue in income tax of the Petitioner for the year 1931 and fixing such deficiency in the amount of $89,841.75.

72 II. The Petitioner on review (hereinafter referred to as "Taxpayer") is an individual, a citizen and resident of the City, County, and State of New York, and her Federal Income Tax Return for the year 1931 was filed with the Collector of Internal Revenue for the Third District of New York, in the

Borough of Manhattan, City, County, and State of New York, in the Judicial Circuit of the United States Circuit Court of Appeals for the Second Circuit, which return was the return of the tax in respect of which the alleged deficiency or liability arises.

The Respondent on review (hereinafter referred to as "Commissioner") is the duly appointed, qualified, and acting Commissioner of Internal Revenue of the United States, holding his office by virtue of the laws of the United States.

Nature of Controversy

III. The nature of the controversy is as follows:

"1. Whether a dividend paid on the common stock of a corporation in its own preferred stock is exempt from taxation under the Revenue Act of 1928 and other applicable Statutes of the United States.

"2. Whether such a preferred stock dividend is made taxable by reason of the fact that at the time such preferred stock dividend was paid there was outstanding other preferred stock of the same class.

"3. Whether a dividend paid on the common stock of a corporation in its own preferred stock, at a time when there was other
73 preferred stock of the same class outstanding, is exempt from taxation under the Constitution of the United States.

"4. If such stock dividend is not exempt from taxation under the applicable Statutes of the United States or under the Constitution of the United States, whether such stock dividend was distributed under such circumstances as to render it exempt from taxation as having been distributed in pursuance of a Plan of Reorganization of the Corporation within the meaning of the provisions of Section 112 of the Revenue Act of 1928."

Summary of Facts

The Taxpayer was on and prior to April 27, 1931, the owner of 25,165 shares of common stock of William R. Warner Corporation, a Delaware corporation (hereinafter sometimes referred to as "Corporation").

On April 27, 1931, the Taxpayer received 6,291¼ shares of preferred stock of the Corporation with a par value of $100 per share as a dividend on the common stock of the Corporation so held by her, such dividend being her pro rata share of 25,000 shares of the preferred stock of the Corporation issued at that time as a dividend to all of the common stockholders of the Corporation.

The Commissioner, in determining the income of the Taxpayer for the year 1931 included the par value of such 6,291¼ preferred shares, taken for this purpose as the market value, as a taxable dividend for the year 1931, such par value and such market value being $629,125.

74 Just prior to the time of the declaration of such stock dividend there were outstanding 79,540 shares of preferred stock of the Corporation of the same classification, priority, and preference

as the stock in which said stock dividend was declared and paid, of which preferred stock, prior to such declaration of dividend, the Taxpayer owned 9,642 shares.

All of the said preferred stock of the Corporation was preferred as to dividends in the amount of 6% annually and, in case of dissolution, preferred as to principal. The said preferred stock had no voting rights, all voting rights being vested in the common stock.

On January 1, 1931, shortly prior to the time of the declaration of such stock dividend, the Corporation and its subsidiary companies had an Earned Surplus of $10,422,494.53. The Consolidated Net Earnings of the Corporation and its subsidiaries for 1931 and the immediately preceding years, after the payment of taxes, were as follows:

1931	$2,380,079.34
1930	2,148,901.34
1929	3,393,283.94
1928	3,679,918.31

The Consolidated Net Earnings of the Corporation and its subsidiaries were far more than sufficient to meet the annual dividend requirements of all the preferred stock of the Corporation outstanding, at all times since the organization of the Corporation in 1920, including the said preferred stock of the Corporation distributed in 1931.

75 On December 31, 1931, after the issuance of the said preferred stock of the Corporation as a stock dividend in 1931, the Earned Surplus of the Corporation and its subsidiaries was $8,845,606.58.

On November 28, 1928, there was an increase of 100,000 shares in the authorized preferred stock of the Corporation. Of such increase of 100,000 shares in the authorized preferred stock of the Corporation, 50,000 shares were issued on December 31, 1928, as a stock dividend. On April 27, 1931, 25,000 shares of preferred stock of the Corporation were issued as a stock dividend, of which the Taxpayer received 6,291¼ shares. It is fair to assume from the facts that the said 6,291¼ shares of preferred stock of the Corporation so received by the Taxpayer in 1931, which are the subject of the deficiency tax involved in this proceeding, were a part of the said 100,000 shares of the Corporation, authorized in 1928.

IV. The case was submitted to the Board of Tax Appeals on an Amended Petition, Answer and Agreed Statement of Facts on April 20, 1936, and after due hearing the Board entered on June 27, 1936, a Memorandum Opinion holding, among other things, that such dividend of 6,291¼ shares of preferred stock of the Corporation was not a stock dividend within the meaning of Section 115 (f) of the Revenue Act of 1928, and was subject to tax in 1931.

On July 22, 1936, there was entered herein an Order of the Board of Tax Appeals determining a deficiency against the taxpayer in the sum of $89,941.75 based upon such Memorandum Opinion.

76 Court in Which Review is Sought

V. The Taxpayer, being aggrieved by the Decision of the Board of Tax Appeals, hereby petitions for a review of said Decision by the United States Circuit Court of Appeals for the Second Circuit.

Assignments of Error

VI. The Taxpayer's Assignments of Error are as follows:

1. The Board of Tax Appeals erred in holding and deciding that the said dividend on common stock of the Corporation, paid by the Corporation, in 1931 in shares of its own preferred stock, was taxable.

2. The Board erred in holding and deciding that the said dividend on common stock of the Corporation, paid by the Corporation in 1931 in shares of its own preferred stock, was not a stock dividend within the meaning of Section 115 (f) of the Revenue Act of 1928 and was taxable.

3. The Board erred in not holding and deciding that the said dividend on common stock of the Corporation, paid by the Corporation in shares of its own preferred stock, constituted a non-taxable stock dividend under the Revenue Act of 1928 and other applicable Revenue Acts of the United States.

4. The Board erred in not holding and deciding that the said dividend on common stock of the Corporation, paid by the Cor-
77 poration in shares of its own preferred stock, was exempt from taxation under the Constitution of the United States.

5. The Board erred in not holding and deciding that the said dividend on common stock of the Corporation, paid by the Corporation in shares of its own preferred stock, was exempt as a distribution in pursuance of a Plan of Reorganization of the Corporation within the meaning of the provisions of Section 112 of the Revenue Act of 1928.

6. The Board erred in holding and deciding that there is a deficiency in the taxes of the Taxpayer for 1931 in the sum of $89,841.75, or any other sum.

Wherefore, the Taxpayer petitions that the said decision of the Board of Tax Appeals be reviewed, reversed, and set aside by the United States Circuit Court of Appeals for the Second Circuit; that the Clerk of the United States Board of Tax Appeals be directed to prepare a Transcript of the Record and to transmit and deliver to the Clerk of this Court certified copies of all documents necessary and material to the presentation and consideration of the foregoing Petition for Review and as required by the rules of said Court and the statutes made and provided, and that appropriate

action be taken to the end that the errors complained of may be reviewed and corrected by said Court.

Roger S. Baldwin,
(Sgd) ROGER S. BALDWIN,
Attorney for Petitioner,
120 Broadway, New York, New York.

78 [*Duly sworn to by Roger S. Baldwin, jurat omitted in printing.*]

79 Before United States Board of Tax Appeals
[Title omitted.]

Notice of filing petition for review

Filed Aug. 7, 1936

To HERMAN OLIPHANT, Esq.,
General Counsel for the Department of the Treasury,
Bureau of Internal Revenue, Washington, D. C.:

Please Take Notice that the Petitioner in the above entitled proceeding did, on the 7th day of August, 1936, file with the Clerk of the United States Board of Tax Appeals at Washington, D. C., a Petition for Review, by the United States Circuit Court of Appeals for the Second Circuit, of the Decision of the Board heretofore rendered in the above-entitled cause. A copy of the Petition for Review and the Assignment of Errors as filed is hereto attached and served upon you.

Dated, at New York City, this 7th day of August, 1936.

Respectfully,

Roger S. Baldwin,
(Signed) ROGER S. BALDWIN,
Attorney for Petitioner,
120 Broadway, New York City, New York.

80 Personal service of the foregoing Notice, together with a copy of the Petition for Review and Assignments of Errors mentioned therein, is hereby acknowledged this 7th day of August, 1936.

Herman Oliphant,
(Signed) HERMAN OLIPHANT,
General Counsel for the Department of the Treasury,
Bureau of Internal Revenue.

Before United States Board of Tax Appeals
[Title omitted.]

Praecipe for transcript of record

Filed Aug. 7, 1936

To the CLERK OF THE UNITED STATES BOARD OF TAX APPEALS,
Washington, D. C.:

You are Hereby Requested to prepare, certify, transmit and
81 deliver to the Clerk of the United States Circuit Court of Appeals for the Second Circuit a Transcript of the Record, duly certified as correct, and to include in said Transcript the following documents and records or certified copies thereof in the above entitled cause in connection with the Petition for a Review by the said Circuit Court of Appeals for the Second Circuit, heretofore filed herein by the undersigned:

1. The Docket Entries of proceedings herein before the Board.
2. Pleadings before the Board herein:
a. Amended Petition.
b. Answer to Original and Amended Petition.
3. Agreed Statement of Facts filed with the Board on April 20, 1936.
4. Copy of Petitioner's Federal Income Tax Return for 1931.
5. Memorandum Opinion of the Board entered June 27, 1936.
6. Decision of the Board entered on July 22, 1936.
7. Petition for Review, filed by the Petitioner in the above cause, with Notice of Filing Petition for Review, together with Proof of Service of a copy of said Petition for Review and said notice.
8. This Praecipe.

Dated, New York, New York, August 7th, 1936.

Respectfully,

Roger S. Baldwin,
(Signed) ROGER S. BALDWIN,
Attorney for Petitioner.

82 Service of a copy of the above Praecipe is hereby admitted this 7th day of August, 1936.

Herman Oliphant,
(Signed) HERMAN OLIPHANT,
General Counsel for the Department of the Treasury,
Bureau of Internal Revenue,
Attorney for Respondent on Review.

[Clerk's Certificate to foregoing transcript omitted in printing.]

84 In United States Circuit Court of Appeals for the Second Circuit

No. 142. October Term, 1936

Argued Jan. 12, 1937.—Decided Feb. 15, 1937

ANNIE M. PFEIFFER, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

Appeal from the Board of Tax Appeals

Before MANTON, L. HAND, and SWAN, Circuit Judges

Petition to review a decision of the Board of Tax Appeals. The taxpayer files the petition. Determination reversed.

Roger S. Baldwin, of New York City, for petitioner.

Robert H. Jackson, Asst. Atty. Gen., and Sewall Key and Morton K. Rothschild, Sp. Assts. to the Atty. Gen., for respondent.

Opinion

MANTON, Circuit Judge: This is a petition to review a decision of the Board of Tax Appeals partially affirming a deficiency determined by the Commissioner of Internal Revenue in the income tax of the petitioner for the year 1931 and fixing such deficiency in the amount of $89,841.75. Wm. R. Warner & Co. Inc.'s original capital stock consisted of 20,000 shares of preferred stock and 3,000 shares of common stock of the par value of $100 per share for both classes. The preferred stock was 6 per cent. cumulative, had no voting power, and was entitled to a preference on liquidation. On various occasions the corporation increased its authorized capital stock and capitalized its earnings by distributing stock dividends. In 1928 and 1931 it made distributions of preferred stock as dividends among its common stockholders which represented earnings and profits accumulated since its incorporation in 1920. Petitioner, as owner of 25,165 shares of common stock, received 12,582 preferred shares in 1928 and 6,291¼ shares in 1931. At the time of these distributions, the fair market value of each share was $100. In 1931 there were no unpaid dividends due on the outstanding preferred stock and the corporation and its subsidiaries had an earned surplus of over eight million dollars. In 1931 the corporation redeemed with cash at par 8,500 preferred shares, 2,000 of which petitioner owned, having received them in the 1928 distribution.

The Commissioner determined a deficiency in petitioner's income tax for 1931, first, because of the failure to include in income the fair

market value, viz, $629,125, of the preferred stock distributed to her in 1931, and, second, because of the failure to include as income $200,000 received from the redemption of the 2,000 preferred shares. The Board upheld the Commissioner's determination as to the first holding that the stock dividend of 1931 was not exempt from taxation by section 115 (f) of the Revenue Act of 1928 (45 Stat. 822, 26 U. S. C. A., § 115 (f) and note). It ruled as to the second that, since the 1928 stock dividend was taxable income as of that year, each share had a basis of $100 in determining gain or loss, and that, since the redemption price was $100 per share, no taxable income existed. The Commissioner has not appealed from this ruling.

85 The dispute centers about the 1931 stock dividend, and the question is whether it is covered by section 115 (f) of the Revenue Act of 1928, 26 U. S. C. A., § 115 (f) and note, reading: "A stock dividend shall not be subject to tax." Does the statute exempt the preferred stock dividend paid upon common stock? A dividend of common stock paid upon preferred stock was held, in Com'r v. Tillotson Mfg. Co., 76 F. (2d) 189 (C. C. A. 6), not to be tax exempt. The taxpayer had sold its preferred stock, and it was argued by the Commissioner that, since the stock dividend was tax free, the original cost basis of the preferred shares should be reduced by allocating a part thereof to the common stock. The court considered that the question depended upon whether or not the dividend was free of tax under the statute. It held that the dividend was subject to tax at the time of its distribution and that therefore the Commissioner's position was untenable. The same issue was presented in Koshland v. Helvering, 298 U. S. 441, 56 S. Ct. 767, 769, 80 L. Ed. 1268, 105 A. L. R. 756, where the court prescinded from the question whether Congress had, in the Revenue Acts of 1926 and 1928 (44 Stat. 9 and 45 Stat. 791), undertaken to tax the dividend upon its receipt. Its position was that such a dividend is constitutionally income and that no departmental regulations could compel the use of "income derived from a capital asset" to reduce cost.

The issue whether a preferred stock dividend on common stock is taxable under the 1928 act was presented in Gowran v. Com'r (C. C. A.), 87 F. (2d) 125, decided December 22, 1936, by the Seventh Circuit. Three months after receiving the preferred stock, the taxpayer sold it to the corporation at $100 per share. The court found no justification for implying a limitation into the comprehensive language of secton 115 (f), 26 U. S. C. A., § 115 (f) and note, which exempts stock dividends without qualification, and held that, since the value of the tax-free dividend at the time of its receipt was $100 per share, no taxable income existed.

In the Koshland Case, supra, the court, because of the grounds upon which it rested its decision, did not find it necessary to decide whether the dividends there considered were exempt from tax under the statute. The language of the opinion, however, indicates that the court considered such dividends to be so exempt, saying:

"Although Eisner v. Macomber [252 U. S. 189, 40 S. Ct. 189, 64 L. Ed. 521, 9 A. L. R. 1570] affected only the taxation of dividends declared in the same stock as that presently held by the taxpayer, the Treasury gave the decision a broader interpretation which Congress followed in the act of 1921. Soon after the passage of that act, this court pointed out the distinction between a stock dividend which worked no change in the corporate entity, the same interest in the same corporation being represented after the distribution by more shares of precisely the same character, and such a dividend where there had either been changes of corporate identity or a change in the nature of the shares issued as dividends whereby the proportional interest of the stockholder after the distribution was essentially different from his former interest. Nevertheless the successive statutes and Treasury regulations respecting taxation of stock dividends remained unaltered."

This language indicates clear recognition that the exemption contained in the Revenue Act was broader than required by the decision of Eisner v. Macomber, 252 U. S. 189, 40 S. Ct. 189, 64 L. Ed. 521, 9 A. L. R. 1570, and that it is coextensive with that contained in the regulations.

This fact is amply demonstrated by the background and history of section 115 (f). The Revenue Act of 1913 (38 Stat. 114) imposed an income tax on dividends; Towne v. Eisner, 245 U. S. 418, 38 S. Ct. 158, 62 L. Ed. 372, L. R. A. 1918 D, 254, held that a common stock dividend on common stock was not within the statute; Eisner v. Macomber, supra, held that such a dividend was not income and could not constitutionally be taxed; thereafter the Revenue Act of 1921 (42 Stat. 227) categorically excluded all stock dividends and, though the House and Senate Reports mentioned Eisner v Macomber as a reason (H. R. 350, 67th Congress, 1st Sess., p. 8; Senate Rep. No. 275, 67th Cong. 1st Sess., p. 9), there is not the slightest suggestion that Congress foresaw, or, if it did foresee, that it
86 intended to take advantage of, the fact that a different constitutional rule might apply to one or both types of dividends in stock of a different class from that held by the stockholder. Section 115 (r), 26 U. S. C. A., § 115 (f) and note, flatly declares that "a stock dividend shall not be subject to tax"; and section 115 (g), 26 U. S. C. A., § 115 (g) and note, makes an exception where a corporation cancels or redeems a stock dividend under such circumstances that the dividend is essentially "equivalent to * * * a taxable dividends." Koshland v. Helvering, supra, prompted the insertion in the Revenue Act of 1936, 26 U. S. C. A., § 115 (f), of a provision taxing a stock dividend upon stock of a different class.

The administrative construction [1] of this statute is entitled to great weight. Fawcus Machine Co. v. United States, 282 U. S. 375, 51 S.

[1] 1 T. 1900, C. B. III—1, p. 82 (1924); 1 T. 2449, C. B. VIII—1, p. 101 (1929); 1 T. 2538, C. B. IX—1, p. 144 (1930); article 1548, Reg. 62 (1922), interpreting Revenue Act of 1921.

Ct. 144, 75 L. Ed. 397; Brewster v. Gage, 280 U. S. 327, 50 S. Ct. 115, 74 L. Ed. 457. Both before and after the enactment of the Revenue Act of 1921 (42 Stat. 227), the Treasury Department has considered the term "stock dividend" as meaning any dividend paid by a corporation in its own stock. In Koshland v. Helvering, supra, a series of departmental regulations was overthrown which required an allocation of cost between the dividend stock and the stock on which it was declared. The statutory provisions demanding the deduction of cost in computing capital gain were deemed clear beyond all administrative interpretation and were held not to permit the use of income to reduce cost. If we say that originally the provision exempting stock dividends from taxation was, in view of Eisner v. Macomber, ambiguous, then the Treasury regulations would seem to have acquired the force and effect of law and the meaning of the re-enacted provisions would stand clarified; if we say that the statute was always free from ambiguity, then the regulations merely embodied its clear command.

The appellee argues that the proceeds from the redemption in 1931 of 2,000 shares of preferred stock distributed as a stock dividend in 1928 should be considered either (a) subject to a tax as a capital gain or (b) subject to taxation as the equivalent of the distribution of a taxable dividend pursuant to section 115 (g) of the Revenue Act. The question of taxability as capital gain of the $200,000 or any part thereof was not in issue before or decided by the Board of Tax Appeals. The contention that we have authority to sustain the deficiency pro tanto even though the issue was not raised before the Board nor decided by it nor assigned as error in the petition to this court for a review of the Board's decision is untenable. General Utilities & Operating Co. v. Helvering, 296 U. S. 200, 56 S. Ct. 185, 80 L. Ed. 154; Helvering v. Salvage, 297 U. S. 106, 56 S. Ct. 375, 80 L. Ed. 511. The Board held that this stock dividend redeemed in 1931 at $100 per share was taxable in the year 1928 when received and was therefore not taxable under section 115 (g); that it had a basis for gain or loss of $100 per share; and that therefore there was no taxable income from the redemption. The Commissioner did not file a cross-appeal. By the provisions of section 115 (g) the proceeds of the redemption of the stock can be taxed only if it occurs at such time and in such manner as to make the redemption essentially equivalent to the distribution of a taxable dividend. Since the Board did not so find, we cannot support this contention. Helvering v. Rankin, 295 U. S. 123, 55 S. Ct. 732, 79 L. Ed. 1343.

Determination reversed.

L. HAND, Circuit Judge, dissenting with opinion.

87 In United States Circuit Court of Appeals for the Second Circuit

No. 142. October Term, 1936

Argued Jan. 12, 1937.—Decided Feb. 15, 1937

ANNIE M. PFEIFFER, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

Appeal from the Board of Tax Appeals

Before MANTON, L. HAND, and SWAN, Circuit Judges

Dissenting opinion

L. HAND, Circuit Judge (dissenting): There cannot be any fair doubt that Congress exempted stock dividends only because it supposed that Eisner v. Macomber, 252 U. S. 189, 40 S. Ct. 189, 64 L. Ed. 521, 9 A. L. R. 1570, compelled it to do so. At that time those distinctions had not been suggested which have now limited that ruling to shares of substantially the same kind. If Koshland v. Helvering, 298 U. S. 441, 56 S. Ct. 767, 80 L. Ed. 1268, 105 A. L. R. 756, had followed immediately upon the enactment of section 201 (d) of the Act of 1921 (41 Stat. 228) I should have had little doubt of the propriety—as there could have been none whatever of the desirability—of limiting its scope to such stock dividends as were not income; especially as we are dealing with a tax exemption and doubts go against the taxpayer. Preferred shares issued as a dividend upon common are as much income as common upon preferred, for the question is always whether a substantially new right has been created just as it is in reorganization. Weiss v. Stern, 265 U. S. 242, 44 S. Ct. 490, 68 L. Ed. 1001, 33 A. L. R. 520; Marr v. United States, 268 U. S. 536, 45 S. Ct. 575, 69 L. Ed. 1079. Of course, it is always possible to stick to the literal words, and to insist that "stock dividends" meant every dividend of stock; but that is never a good way to find out what words really mean; whether in a statute, a will, a deed, a contract, or when spoken. There is no way but to reinstate the circumstances in which they were uttered, and discover how much a reasonable person would have understood them to include. If that be done, I should think the result is reasonably clear.

Since 1921 there has, however, been administrative and legislative history with which we must reckon. The first regulation after section 115 (f) was enacted (Article 1548, Regulations 62) declared that "stock issued by a corporation as a dividend does not constitute taxable income * * * but gain may be derived * * * from

the sale of such stock." Since 1925 the form has been: "The issuance of its own stock", but the change is not important. Alongside of this there has always been somewhere in the regulations a provision, implementing as it were, the language I have quoted, and expressly prescribing that the basis must be reduced by the dividend. There has therefore never been any administrative interpretation of section 115 (f), so far as I can find, which did not immediately connect it with this method of calculating the "basis"; unless perhaps Article 115–10 (1) of Regulations 86 and its predecessors may be counted. I do not know how far I should have thought these provisions as a whole conclusive; and it is of no consequence, for Koshland v. Helvering, supra, 298 U. S. 441, 56 S. Ct. 767, 80 L. Ed. 1268, 105 A. L. R. 756, has settled it that so far as they affect the "basis", they have been invalid from the beginning. Thus,
88 the only question now is whether though invalid as to that, they may still be authoritative in interpreting section 115 (f) taken alone. I cannot think that we should blow hot and cold; if the effort indirectly to charge the taxpayer with the new shares under the guise of diminishing his "basis" must break down, any concomitant interpretation as to exemption of the shares, qua income, ought to fall with it. Therefore Koshland v. Helvering, supra, seems to me in substance to have limited the relevant evidence of the intent of Congress to the bare words themselves, stripped of administrative gloss; and the bare words will not serve. I think the Board was right and I can find no convincing evidence that in Horrmann v. Commissioner, 34 B. T. A. 1178, 1180, a majority of its members have changed their minds.

89 In United States Circuit Court of Appeals for the Second Circuit

ANNIE M. PFEIFFER, PETITIONER

vs.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

Judgment

Filed Feb. 23, 1937

Appeal from the United States Board of Tax Appeals

This cause came on to be heard on the transcript of record from the United States Board of Tax Appeals, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged, and decreed that the order of said United States Board of Tax Appeals be and it hereby is reversed.

It is further ordered that a Mandate issue to the said Board in accordance with this decree.

WM. PARKIN, *Clerk.*

90 [File endorsement omitted.]

91 [Clerk's Certificate to foregoing transcript omitted in printing.]

92 Supreme Court of the United States

Order allowing certiorari

Filed May 17, 1937

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted, and the case is assigned for hearing immediately following No. 887.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(Endorsement on cover:) File No. 41,435. U. S. Circuit Court of Appeals, Second Circuit. Term No. 895. Guy T. Helvering, Commissioner of Internal Revenue, petitioner, vs. Annie M. Pfeiffer. Petition for a writ of certiorari and exhibit thereto. Filed April 15, 1937. Term No. 895 O. T. 1936.

U. S. GOVERNMENT PRINTING OFFICE: 1937